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ABSTRACT

A study was undertaken of proprietary school oversight and regulation in order to seek ways to improve state oversight of the proprietary sector. Twenty states participated in the study which used questionnaires sent to key state contact persons, telephone interviews conducted primarily with persons who had received the questionnaires and documents submitted by questionnaire filers and interviewees. The study found several principles upon which to base strengthened state licensing reform: license to operate a postsecondary institution must be conditioned on a reasonable expectation of business viability and success; in the event of school closure or failure, students must be financially protected and given the opportunity to complete their program of study; the state role in oversight and regulation involves assuring both consumer protection and educational quality; state financial support for licensing standards must be adequate to ensure proper enforcement; standards must be fair and equally applied, and coordination and consolidation of state licensing should be implemented to the greatest extent possible. Appendixes contain summary results, a copy of the questionnaire, a list of participants, and examples of current regulation from five states. (JB)

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The Methods and Effectiveness of State Licensing of Proprietary Institutions

A Report of the State Higher Education Executive Officers

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FOREWORD

Proprietary schools, or private career schools as they are sometimes called, are an important part of the nation's postsecondary education system. More than 4000 proprietary institutions educate an estimated two million students in a wide range of occupational programs, both degree and nondegree. Despite this growing presence, many states continue to ignore proprietary schools from both a regulatory and a policy perspective. This neglect, sometimes supported by proprietary schools which wish to be treated more as unfettered small businesses than educational institutions, has led to lax standards in some institutions and widely publicized abuses reported to congressional committees and the subject of numerous journalistic exposes. Issues that have been raised about these schools include their growing use of the major federal student grant and loan programs, the significant growth in the total dollars being defaulted by student borrowers through the federal guaranteed student loan programs (coinciding with the increasing use of loan programs by proprietary school students), the quality of the education and training received by students, and the sudden closure of institutions and the subsequent disruption to students. These issues have placed proprietary schools under increasing scrutiny by policy makers, the media, and prospective students.

In the course of the several hearings and discussions we have had with the proprietary sector during this study, we heard from some in the proprietary sector who wanted no part of increased state oversight. However, we also heard from others who were vitally interested in regulatory reform both through the states and through strengthened accreditation. Not surprisingly, these individuals represented some of the finest proprietary institutions in the United States of which there are many.

One important discovery in these meetings and hearings was that there are more points of agreement than disagreement. There is, for example, genuine agreement among the states and the proprietary sector over the need to protect consumers, especially from the impact of sudden business failure. There is also a desire to protect the integrity of student aid programs and funding. Finally, we believe there is a commitment to seek the least burdensome, most effective, oversight. Higher education officials, in partnership with proprietary school leaders, should be committed to a strong and effective private career sector because it is a vital and necessary component of the overall higher education system.

If these goals are achieved, we suspect that the proprietary sector will find its credibility increased and its participation as a full partner in the state systems of postsecondary education enhanced.

One question which was repeatedly raised during our study was why we have singled out the proprietary sector for special attention. The answer, of course, is that we have not. The State Higher Education Executive Officers collectively and individually have had a long and consistent commitment to the concept of public accountability of educational institutions.[1] What we may have been slow to recognize is that private career schools should be viewed more as places of education and training subject to public accountability than as business enterprises where "benign neglect" was the operating public policy.

It is this realization, along with considerable public pressure from dissatisfied consumers including employers, that has led many states to bring the proprietary sector under a regulatory umbrella that more closely resembles that applied to public institutions. The national context, including attention by the U.S. Congress, has also pushed the states toward regulatory reform.

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[1] A good example of this can be found in the work of the SHEEO Task Force on Program and Institutional Assessment, which called upon all public institutions to provide states data on a variety of performance and outcome measures.

In terms of federal policy, SHEEO has undertaken several efforts concurrent with this study. We have supported, along with the American Council on Education and other higher education organizations, measures to strengthen all three legs of the "triad" of institutional eligibility for federal student aid. These recommendations suggest more stringent federal guidelines regarding the administrative and financial capacity of institutions, better management of the process by which accrediting organizations are placed on the Secretary of Education's approved list, and many other points. Most important, however, is our recommendation to significantly strengthen the role that state licensing plays in the federal aid institutional eligibility process.

In cooperation with the New York State Board of Regents, SHEEO has developed legislative language to be considered during the reauthorization of the Higher Education Act that could significantly change the state role in this process. SHEEO has proposed that Congress authorize the Secretary of Education to enter into agreements with the states for the purposes of approving institutions and educational programs which receive Title IV funds.

Operating within broad guidelines established by the Secretary, and consistent with the legislation, a designated State Postsecondary Approving Agency would establish a state plan which would be submitted to the Secretary for approval or disapproval. The state plan would include state-defined standards for licensing in several areas, including institutional financial and administrative capacity, facilities and personnel, academic policies and performance of students, tuition and recruitment policies, and other standards that a state may legally require. Each state would develop appropriate state-level standards within each of these areas, and submit that plan to the Secretary.

Significantly, we have also proposed that the federal government help states pay for the costs of increased regulation and oversight. Currently states, through direct appropriations, and institutions, through fees, share the costs of state licensing and regulation. A strengthened federal-state partnership, however, especially with the establishment of minimal federal requirements for licensing, will result in increased costs, which we believe should be borne in part by the federal government. The costs of such a program would be more than offset by the significant savings and improved program delivery achieved through the reduction in fraud and abuse of federal student aid programs and funds.

This plan would likely result in a restructured system of institutional eligibility for federal student assistance, one where state licensing would become the centerpiece. We believe this is entirely appropriate, and consistent with federal policy goals, for several reasons. First, it establishes the primary locus of responsibility close to the actual source of regulation. Second, it retains to the states what is constitutionally and historically their preeminent responsibility for providing and ensuring quality delivery of educational services. Finally, it places the lion's share of oversight responsibility for governmental programs in the hands of governmental bodies, rather than ceding this authority to private, non-governmental accrediting groups, which for their own reasons shy away from a monitoring or regulatory role.

This detailed plan for reform of federal laws and procedures, while significant, can only be effective to the extent that the states themselves take a much more aggressive and proactive role in improving licensing practices and procedures. While many states have already initiated regulatory reform to improve licensing, overall the standards for licensing at the state level must be significantly improved. Thus this study, which recommends national standards for state licensing to be adopted by the states, is a critical part of this process of improving oversight.

Only through a concerted effort on the part of the states themselves — with some assistance from the federal government — can state standards be meaningfully and effectively improved.

Many individuals deserve credit and accolades for their fine work on this study. First are the members of the SHEEO Committee on Accreditation and Licensure, who have shepherded the conduct of the study over the past two years and who have guided its direction and content. Also, the members of the Advisory Committee to the project (listed in the Appendix) have been particularly diligent in their review of drafts of the study, comments on study design, and suggestions for further study.

The more than 100 witnesses and participants in the four regional hearings held during the first half of 1991 — most of whom were from the proprietary sector — deserve special mention. Their candid and constructive comments on the consultant's review draft of this report have played an important role in bringing it to its present form, and have helped to make it a much stronger, more comprehensive document.

Finally, we would like to thank our consultant and project director, Jamie P. Merisotis, for the quality of his research, the thoughtfulness of his recommendations, and his unrelenting commitment to the project. He has managed both to provide us his independent professional judgement and to staff a collective effort involving a wide range of individuals, all of whom have had their own ideas on the process and content of this study. While the final product represents that collective effort, the report itself is a result of the capable work of Mr. Merisotis.

Kenneth H. Ashworth
Commissioner
Texas Higher Education Coordinating Board
Chair, SHEEO Committee on Accreditation
and Licensure

James R. Mingle
Executive Director
State Higher Education Executive
Officers

EXECUTIVE SUMMARY

Each year, approximately two million students attend for-profit, proprietary vocational schools in America. These schools are an important part of the system of postsecondary education and training in the nation. Overall, proprietary schools represent a significant portion of the vocational education, and especially the postsecondary vocational education, sought by students.

Every state performs some process which they call licensing or approval of these schools. However, as more students attend these schools annually, and as more funds are invested in those students through student aid and job training, there is a growing belief that many states do not have adequate laws and regulations to protect students and the taxpayers who have invested their money in those students. Several states have examined this limited oversight and confirmed its existence.

This study has been undertaken in part to get a better sense of the current state of proprietary school oversight and regulation. The purpose of the study has been to seek ways to improve state oversight of the proprietary sector in order to better protect both student and governmental investment in these schools. The multi-state study approach has helped to define the current diversity of practices concerning state licensing and to offer recommendations that can help guide state laws and regulations on a national basis. Rather than model legislation, the study presents examples of good practice which can serve as models.

The study has found that there are several principles upon which strengthened state licensing should be based. These principles provide the context for reform. They are:

- A license to operate a postsecondary institution must be conditioned on a reasonable expectation of business viability and success.
- In the event of the business failure or sudden closure of a school, students must be financially protected and given the opportunity to complete their program of study.
- The state role in oversight and regulation involves assuring both consumer protection and educational quality.
- State financial support for existing or strengthened licensing standards must be adequate to ensure proper enforcement.
- Standards governing institutional licensing must be fair and equally applied, particularly with respect to credentials with similar titles.
- Coordination and consolidation of state licensing should be implemented to the greatest extent possible.

The study has also found that nearly every state has its own particular model of governance or organizational structure for proprietary school oversight. Rather than attempting to devise an "ideal" governance model — which would likely result in delay of reform implementation in many states — this study instead has constructed five basic models of good governance. These models each have their own strengths and weaknesses that must be carefully weighed, though broad experience with postsecondary quality issues is a decided advantage. The models of governance are:

- The Consolidation Model, where all licensing and oversight authority is vested in a single, existing agency with prior postsecondary experience
- The Licensure Board Model, where licensing/oversight authority rests with an independent board consisting of political and state agency appointees
- The Coordination Model, where the current set of agencies with licensing or oversight responsibility consciously work more closely to coordinate activities and avoid duplication or inconsistency
- The Dual Licensing Model, where all schools are subject to separate institutional licensing and programmatic approval
- The Student Aid Agency Model, where the consolidation of all oversight and regulatory functions, including loan guaranteeing and state grant awarding, originate with the same agency

Regardless of the model of governance assumed, this study recommends that state licensing practices and procedures be significantly reformed. This reform must come in many forms, including staffing, the methods of paying for oversight, the inclusion of proprietary schools in the oversight process, and the many broad provisions concerned with consumer protection and education standards, such as advertising, institutional finances, and admissions standards.

One of the most pressing issues highlighted in this study concerns licensing agency staffing. Most of the states participating in the study exhibited inadequate numbers of staff needed for enforcement of existing laws and regulations. However, perhaps more important than the numbers of staff needed for adequate enforcement is the types of staff needed. In addition to a chief executive and support staff, agencies should also hire investigative/field staff, accounting or financial specialists, education and training experts, and in-house legal staff.

Paying for the oversight of the proprietary sector is also an important issue. State financial support for licensing functions must be adequate to ensure that existing or strengthened laws and regulations are properly enforced. Simply adding new levels of regulation without providing the resources to support their enforcement is regressive and may ultimately do more harm than good. By seeking some increases in state appropriations and fees, states can partially address this issue. While the decision whether to rely primarily on state appropriations or fees is state-specific, in most cases some combination of the two is probably appropriate. However, if generating significantly more funds is the goal, fees have a distinct advantage because they can frequently be modified through regulatory or administrative means to meet agency needs.

The study has also found that proprietary schools should play a limited direct role in the governance process, similar to the limited role played by most public higher education institutions in the process of statewide governance and coordination for traditional higher education. However, there are areas where constructive involvement of school owners could be an important benefit to the state. For example, maintaining relations with state proprietary school associations and establishing advisory commissions are ways in which states can obtain important inputs from schools. In general, however, schools should not be represented on direct oversight bodies because of the potential for perceived conflicts of interest.

As for the actual licensing process and monitoring of schools, there is considerable variation across states. As a first step, it is recommended that schools be licensed annually, with at least one site visit scheduled during this time. Joint site visits with other state agencies, guarantee agencies, and accrediting organizations should also be explored.

During the initial and annual relicensure processes, several consumer protection issues should be examined and regulated. They include:

- Advertising - Provisions should cover the use of advertising in newspaper classified advertising, unverified data on outcomes, promises of student aid receipt, and other topics.

- Schools Catalogs and Enrollment Agreements - Catalogs should contain official information on courses, facilities, equipment, verified data on student outcomes, policies governing tuition refunds, and other issues. Enrollment agreements should contain similar information plus a notice about cancellation provisions and sources of further information about the school or other vocational programs.

- Reviewing School Personnel Credentials - Owners, directors, teachers and commissioned agents should all be subject to the approval of the state.

- Institutional Finances - The financial abilities and operations of proprietary schools should be closely regulated, including setting specific guidelines for pro-rata tuition refund policies, requiring audited financial statements, and requiring schools to post surety bonds and participate in a tuition reimbursement fund to protect students in cases of sudden school closure.

- Teach Outs - Schools should be required to submit teach out plans which describe arrangements for providing continuing training to students in the event of the sudden closure of the school.

- Site Visits - All schools should be visited annually by the state, and unannounced visits should be conducted every two years.

- Licensing Exemptions and Exceptions - Provisions exempting or in any way lessening the requirements of licensure for accredited schools or branch campuses should be abolished.

- Addressing Consumer Complaints - States should establish procedures for addressing consumer complaints through a system of conflict resolution and arbitration.

States also have broad responsibility for setting and maintaining minimum education standards in order to protect the consumers of proprietary education. The topics that state licensing agencies should consider examining in setting and maintaining standards include:

- Pre-Enrollment Standards - State resources permitting, students could be required to demonstrate an ability to benefit from the training offered by an institution. This could be accomplished through a diagnostic skills test that would be used by the state as an evaluative tool in order to help students assess their own skills, interests, and employment potential. All students should also be encouraged to receive job or career counseling prior to the start of classes.
- Curriculum and Program Standards - States should regulate, through the use of expert consultants, the curriculum and course content of schools in order to evaluate the objectives of the program, the teaching methodology, and the expected outcomes for students.
- Outcomes - Information on outcomes should be collected by every state using uniform standards established by a national task force, convened by the U. S. Department of Education. The outcomes measures should eventually be used to link licensing to outcomes according to standards set by the states. In addition, they should be widely disseminated to prospective students to promote informed choice.

As a next step in this study, some of the recommendations contained in this report should be converted to legislative or regulatory language. This language can then be taken up by states in order to improve or strengthen those provisions which do not meet the standards outlined herein.

The level of regulation in the states should fit the level of potential abuse. States differ significantly in the size, scope and quality of the proprietary sector. This fact suggests that each state should apply the recommendations of this report in ways that focus resources where the problems are greatest.

Further, the need for all states to be aware of, and participate in, the national discussion of reform of state laws and regulations is critical. One way to ensure that this discussion continues and does not end with the transmittal of this report is to continue the activities of the SHEEO Committee on Accreditation and Licensure related to state licensing. Each state should also, if it has not already done so, establish a statewide task force (or other appropriate structure) on licensing issues. These state task forces should explore the findings of this study in order to begin addressing ways to implement the recommendations. They should also maintain regular contact with SHEEO in order to provide progress reports and obtain advice on specific issues or concerns.

These and other means should be used to continue moving the agenda of state licensing reform forward. A process long overdue is now in urgent need of attention in many states which have failed to apply the necessary resources and commitment to state oversight of the proprietary sector. The important interests of students, states, and others will be served by this renewed commitment to reform.

I. INTRODUCTION

Study Purpose

Questions concerning the role of states in the licensing or approval of proprietary vocational institutions have been a part of the public policy debate at both the state and federal levels for the better part of two decades.[2] These questions have addressed a variety of concerns, from the protection of consumers and the appropriate role of the states in providing this protection, to the formal integration of proprietary schools into statewide planning and coordination for postsecondary education and training.

Previous reports and papers on state licensing have tended to emphasize whether states license schools and the organizational structure of state agencies charged with exercising oversight and regulation of the proprietary sector.[3] However, since 1985, when all 50 states and the District of Columbia were found to have some form of licensure law for non-degree granting private career schools, the public policy questions have shifted toward the methods employed in licensing schools and the effectiveness of these practices.[4] Several state reports have been produced just within the last two years in order to investigate questions about the licensing of schools, and specifically the ways in which licensing practices and procedures could be improved.[5] These studies have, in many ways, been the inspiration for this report.

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[2] In this report, the terms "proprietary," "private career," and "for-profit vocational" are used interchangeably to describe postsecondary vocational schools licensed by states.

[3] The term "license" is broadly defined in this study as the state authorization to operate an institution and provide educational services in approved programs of study. The terms "registered," "approved," and "authorized" are used in some states to refer to what is called "licensing" in this study. In most states, the specific definition of these terms is contained in state law. For a detailed discussion of this issue, and of state agency organizational structures, see Louis W. Bender, "Licensing/Approval Organization Structure for the Fifty States Covering Private and Proprietary Degree Granting and Non-Degree Granting Institutions," Paper presented at a Seminar for State Leaders in Postsecondary Education, Keystone, CO, July, 1976.

The present study differs with past national efforts and recent state level studies in at least three important ways. First, unlike some of the previously cited national studies, this study does not attempt to catalogue who does what with a precision that results in detailed flow charts and matrices. While such an examination would be helpful, especially in instances where greater inter- and intra-state cooperation is desired, it simply is not feasible in the current public policy climate. The rapidly changing nature of licensing practices and governance structures would likely render such an effort obsolete even before the report was distributed.

Second, this study does not attempt to produce "model legislation" for the fifty states — at least not in the way that this phrase has been used in the past. While the current study does propose standards of good practice regarding consumer protection, educational standards, and other issues--based on universal principles for all states--it avoids "model legislation" for a mostly practical reason: state licensing governance structures vary considerably across states. Because model legislation would have to assume a governance model, debate could get bogged down in discussions of the vehicle of reform rather than the intended outcomes.[6] To avert such an eventuality, this study suggests model provisions which all states should examine without assuming a governance model in which these provisions would have to be enacted. Legislative and regulatory language may later be derived from these model provisions.

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[4] Bruce N. Chaloux, "State Oversight of the Private and Proprietary Sector," Paper presented at a joint session of the National Association of Trade and Technical Schools and the Association of Independent Colleges and Schools, Miami, FL, April 19, 1985.

[5] See "An Update of Proprietary Education in Florida," Report and Recommendations of the Postsecondary Education Planning Commission, February 16, 1989; "Recommendations for Revising the Private Postsecondary Education Act of 1977: A Report to the Legislature and Governor on Needed Improvements in State Oversight of Privately Supported Postsecondary Education," California Postsecondary Education Commission, April, 1989; "State Agency Regulation, Oversight, and Funding of Programs at Proprietary Vocational Schools in New Jersey," Report of the New Jersey Interagency Task Force on Proprietary Vocational Schools, March, 1990; and others.

Third, this study does not deal explicitly with the federal context for licensing. While this context is critical to the students enrolled in American postsecondary education, the current study intentionally focuses on what states--irrespective of federal student aid goals and requirements--can and should do to improve licensing practices and procedures. SHEEO has aggressively pursued reform of the so-called "triad" of institutional eligibility for federal student assistance by recommending specific changes to strengthen all three legs of the triad.[7] These recommendations have been an important part of the current discussions regarding the reauthorization of the Higher Education Act, which is slated for completion sometime in 1992. Still, the need for most states to independently strengthen their licensing laws and regulations is clear, and has been a motivating force for this study.

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[6] This was one limitation of model legislation acknowledged in the 1973 report of the Task Force on Model State Legislation, sponsored by the Education Commission of the States. "Model State Legislation," Report of the Task Force on Model State Legislation for Approval of Postsecondary Education Institutions and Authorization to Grant Degrees, Denver, CO, June, 1973.

[7] In order to be eligible to receive federal student aid funds, all postsecondary institutions must meet three tests: they must be licensed by the state in which they operate, they must be accredited by an agency recognized by the Secretary of Education, and they must certify directly to the federal government that they are administratively and financially capable of properly and efficiently administering federal funds. This is sometimes referred to as the "triad" of institutional eligibility requirements.

Finally, this study focuses on the practices and procedures of licensing, and does not delve into the more detailed issues regarding proprietary school effectiveness — issues that go well beyond the resources and time constraints of this study. Implicit in the conduct of this study has been the assumption that reform of licensing is desired at least in those states being studied, and perhaps in others. However, no assumptions about the performance of individual institutions in a particular state have intentionally been made.

Several diverse purposes are served by this study. It fills an information need by the states, as suggested by the significant number of states volunteering to participate in the study.[8] It may also serve as an impetus for change in those states where little reform has taken place in recent years, and as a benchmark for assessing progress in those states where recently enacted changes have been implemented. The study may also play some role in informing the federal debate concerning institutional eligibility for student aid programs, and help to set parameters within which federal requirements for state licensing may be discussed and implemented.[9]

Importance of Licensing

The importance of state licensing of proprietary schools has been made abundantly clear in recent years. It has become a critical aspect not only in the protection of the interests of consumers in individual states, but also in the preservation of the integrity of the financial commitment made by states and the federal government to those consumers. Concerns about the overlap or possible conflict between state licensing and private accreditation have also increased interest in the topic.

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[8] See Methodology section below for details.

[9] For a more detailed discussion of institutional eligibility for student aid programs, see Lawrence N. Gold, "How Colleges and Career Schools Become Eligible to Participate in Federal Programs: Today's Process and Prospects for Reform," Paper prepared for SHEEO, November, 1990.

The states have generally assumed two broad sets of responsibilities in licensing proprietary institutions. First, all states play some role in what is broadly defined as consumer protection. This may range from more mundane matters, such as ensuring that health and fire standards are maintained, to more specialized concerns, such as the content of advertising by schools and the maintenance of adequate student records. Second, most states have exhibited some authority in the establishment or maintenance of minimum education standards. Examples include state approval of textbooks and equipment, as well as a prescribed curriculum, especially in fields where a state license is required in order for the student to perform the skill or trade learned (such as cosmetology or barbering). Both of these sets of responsibilities relate directly or indirectly to the well-being of state citizens and their subsequent contributions to the state's labor market.

States also have other responsibilities which are concerned specifically with the protection of taxpayer dollars invested in students and schools. For example, the federal government requires that all postsecondary institutions desiring to be certified to receive federal student aid funds be licensed by the state in which they operate. From the federal government's perspective, this provides a level of assurance that state governmental oversight is being exercised on top of whatever other requirements it directly examines.

Thus, state licensing is an important topic in today's policy environment for many, diverse reasons. However, it has been thrust into the limelight just within the last several years primarily because of increasing concern over federal student aid institutional eligibility. This concern was brought to a head in 1987, when institutional default rates in the guaranteed student loan programs were published for the first time.[10] The data indicated that student loan defaulters were disproportionately represented in proprietary schools. The result of these findings was a flurry of legislative and regulatory activity at the federal level. This activity included tightened eligibility standards for the Supplemental Loans for Students (SLS) program, stepped-up loan counseling requirements, and the establishment of institutional eligibility cutoffs based on a measure of the loans defaulted by students attending an institution. Concerns about the viability of the student aid programs, and particularly the effects of high loan default rates in the proprietary sector, have been a key impetus for reform of state licensing standards.[11]

It is important to reinforce the point that, despite this scrutiny of the proprietary sector by policymakers, many high quality, effective proprietary schools exist. In fact, proprietary schools are an integral part of the system of postsecondary educational services for many states. Thus this detailed analysis and scrutiny of state licensing practices and procedures should not be interpreted as an evaluation of the sector or the quality of its institutions, but rather only as an attempt to improve and better coordinate state oversight and regulation.

Role of SHEEOs in Pursuing Reform

One question that has been frequently raised in the conduct of the present study has been what interest state higher education executives have in state licensing of private career schools. The question has been raised in part because of the fact that SHEEOs traditionally have played only a limited role in the licensing of trade schools — usually only those which grant degrees. The vast majority of proprietary schools are non-degree granting and are licensed by a variety of non-higher education agencies, ranging from departments of education to licensing boards.

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[10] Mark Wolfe, David Osman, and Vic Miller, "Report on Federal Guaranteed Student Loan Default Rates by Institutions of Postsecondary Education," Washington, DC: Federal Funds Information for States, 1987.

[11] For further discussion of this topic, see John B. Lee and Jamie P. Merisotis, Proprietary Schools: Programs, Policies and Prospects. Washington, DC: The George Washington University School of Education and Human Development, 1990.

Still, the fact that most SHEEOs do not have primary oversight responsibility for proprietary institutions does not diminish the importance or relevance of the current examination. SHEEOs, especially the majority of whom are the chief administrators for state coordinating boards, play a pivotal role in statewide planning for postsecondary education. Because of this responsibility for, and interest in, a state's overall system of postsecondary education, the concern about postsecondary proprietary education is appropriate. Further, in many states, the SHEEO agency is directly responsible for administering the state student aid programs, and therefore has an even further interest in proprietary school oversight. In fact, in some states, the SHEEO agency also serves as the state guarantor of federal student loans, thereby heightening this interest.

Likewise, the past several years have seen growing direct SHEEO involvement in the licensing of both degree granting and non-degree granting private career institutions. For example, the Colorado Department of Higher Education recently assumed responsibility for the licensing of virtually all proprietary schools in that state. In other states, such as Alabama, proposals to transfer licensing authority to the SHEEO agency have received prominent attention and concern from state legislatures. Thus the issue of state licensing of proprietary schools appears to be a germane one for most SHEEO agencies and a growing topic of interest for others.

Study Methodology

This study of the methods and effectiveness of state licensing of proprietary institutions was begun in March of 1990. The study is a cooperative effort involving 20 states interested in gaining a better understanding of the issues and concerns related to state regulation and oversight of proprietary schools. States which participated in the study include:

Alabama
Alaska
California
Colorado
Florida
Georgia
Hawaii
Illinois
Indiana
Michigan
Mississippi
Missouri
Montana
New Jersey
New York
Ohio
Tennessee
Texas
Utah
Wisconsin

Connecticut and the District of Columbia were also included in the study on an informal basis. Reports, legislation, and related documents from several other states were also examined.

While the study does not include all 50 states, it is generally representative of the diversity of practices, procedures, interests, and concerns related to proprietary school oversight. The group of states is geographically diverse, includes states with significant variations in population density and diversity, and represents states with a wide spectrum of policies and governance vehicles concerning proprietary school regulation. An examination of legislative activity and general public interest in proprietary school oversight (conducted through an analysis of bills introduced and media attention paid to the proprietary sector) suggests that the vast majority of states where proprietary school oversight is an important topic have been included in this study.

Three separate methods were used to collect the data and information used to conduct this study and develop the recommendations contained herein. First, an information questionnaire was sent to a key state contact person in each state participating in the study. This contact person was most often a staff member of the SHEEO agency. Key contact persons were requested to identify the agency (and the name of an individual) primarily responsible for the licensing, regulation, and oversight of three categories of proprietary institutions: degree granting, non-degree granting, and cosmetology schools (if a separate board regulates cosmetology schools in that state). Questionnaires were then distributed to agencies identified by the key contact.

The questionnaires (see Appendix) were not intended to serve as tools for compiling statistical information but as a means for collecting summary information on the schools regulated by the agency, the general agency philosophy and approach to licensing, and the practices and procedures used by that agency to license schools. The questionnaires were also intended to elicit, in a preliminary way, concerns about the current governance structure and the laws and regulations which guide the licensing and oversight of proprietary institutions. In total, thirteen of the twenty states participating in the study completed questionnaires. A summary of key data obtained from these responses is contained in the Appendix.

Following the submission of questionnaires, telephone interviews were conducted with persons in each of the 20 states in the study. The majority of persons interviewed were the same as those who filled out the questionnaires. Interviews were structured in design, with the use of an interview guide as the principle vehicle for obtaining information (see Appendix).

In all more than 30 interviews, ranging in length from one half hour to more than two hours, were conducted. Officials from departments of education and higher education (including SHEEOs and their staffs) were interviewed, as were representatives from state cosmetology boards, commerce departments, loan guarantee agencies, state grant agencies, and others (see list of interviewees in Appendix). Interviews were tailored to meet the expertise of those being interviewed. Representatives of the private career sector were also kept abreast of study progress and consulted on the dissemination of the findings of this study.

Documents submitted by questionnaire filers and interviewees were also examined in the data collection and analysis portions of this study. These documents include state laws and regulations, reports and papers on the oversight of proprietary sector, data on school enrollment and finances, reports and studies conducted by student aid agencies, and newspaper and magazine articles written about proprietary schools.

Several broad questions were examined in each of the steps of data collection and analysis. These questions formed the background of this study and help to drive the remainder of this report. The questions include:

- What is the adequacy of current oversight activities and what are the most effective regulatory structures?
- Are student consumers being adequately protected?
- Are proprietary institutions an important part of the statewide system providing educational services?
- Is the regulatory and planning environment supportive of constructive involvement from the proprietary sector?
- Are standards being set at a level adequate enough to ensure that society's need for quality work-force training is being provided?

Study Limitations

Given the time and resource constraints of this study, there are several limitations that need to be acknowledged up front. First, this study does not distinguish between legislative and regulatory or administrative remedies. Some issues explored in this study obviously would require legislative action in order for reform to take place. For example, implementing a new governance structure would clearly need legislative approval. However, many areas explored in this report fall into a gray area that may depend largely on the state in question and the specific provision. Because no clear cut distinctions can readily be made, this issue has been tabled for later consideration.

Second, no distinction between provisions governing degree granting and non-degree granting proprietary institutions are made. In general, this report suggests that institutions of similar types and missions should be subject to the same standards for licensure. The awarding of degrees requires a special level of oversight of education standards that probably exceeds that for certificate programs. Likewise, unaccredited degree granting schools also should come under special scrutiny because of the increased risk of fraud or abuse posed to consumers. These issues are not fully examined in this report.

Third, issues concerned with specific programs of study are not examined in this study. The diversity of programs offered at proprietary schools, and the need to regulate some of those programs in distinct ways, made the task of describing different programmatic approval processes impossible for the purposes of this study.

Fourth, issues involving the regulation of multi-state proprietary school corporations are not explicitly explored in this report. These schools are an important and significant part of the overall system of proprietary education in the country. Unfortunately, how states should deal cooperatively in the regulation of the business practices of these schools is complex and somewhat arcane for the purposes of this study. The issue of these schools is addressed in this report to the extent that it recommends minimum national standards for licensure.

Finally, the report does not address a trend that has been reported in limited instances concerning the conversion of former private career schools to non-profit institutions. The extent to which this conversion might be occurring in an attempt to substantially avoid state oversight may be important. However, no known data exists concerning the frequency of these conversions, the intent of school owners, or the ways in which states have dealt with this issue.

Focus on Proprietary Institutions

In general, this study strongly endorses the notion that standards governing institutional licensing must be fair and equally applied. Nevertheless, differences do exist between proprietary and other kinds of postsecondary institutions, particularly those that do not grant academic degrees. For example, existing state laws and regulations almost universally place proprietary schools in a separate regulatory "category" than other kinds of postsecondary institutions. These systems have been repeatedly upheld in courts as appropriate. Thus, a study which does not recognize this differential treatment of proprietary schools by the states would be largely irrelevant to current practice.

Further, the majority of proprietary schools provide education and training programs that do differ significantly with those offered in other postsecondary institutions. Most--though not all--offer short-term programs (often less than one year in length) that are vocational in nature. General education or academic requirements are normally not a part of the required curriculum.

Proprietary schools also differ from other kinds of postsecondary institutions in terms of institutional management, facilities, and financial structure. Unlike public higher education institutions, corporate owners or directors are likely to make the key decisions regarding institutional governance, course selection, and faculty and staff compensation. Public higher education institutions are governed by publicly appointed boards of trustees. Similarly, most proprietary institutions lack faculty tenure, have irregular or "rolling" admissions, and do not have housing, health facilities, food concessions, or other auxiliary facilities. In fact, many proprietary institutions often operate out of leased space.

Finally, the public policy environment for the proprietary sector, as noted above, is currently quite different than that for other kinds of schools. Without placing a value on them, or judging their efficacy, we nevertheless believe we have an obligation to explore and evaluate the many questions being raised about these schools. With the significant authority and responsibility placed in the hands of the states for educating or nation's citizenry, we do not think this kind of focused exploration is inappropriate.

As for those proprietary schools which do grant academic degrees (less than 10 percent of which do so), we believe that distinctions along the proprietary/non-proprietary axis are much more arbitrary. For these schools, standards to which they are held should be as close as possible to those which other institutions offering similar degrees and titles are held.[12] This is especially true in the case of performance standards or other outcomes-based standards.

Structure of Report

The remainder of this report seeks to address the issue of reform and arrive at some conclusions about how state licensing practices and procedures might be changed. These conclusions are presented as a series of options and recommendations (with explanatory text) for state policy. The chapter following this Introduction, Chapter II, lays out a conceptual approach to reforming state licensing laws and regulations. These principles for strengthened state licensing should be the backdrop upon which reform of laws and regulations should take place. Chapter III, which discusses a series of governance models which states might utilize as a first step in reforming state licensing, also explores various approaches to the issue of who should be charged with regulating proprietary schools at the state level.

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[12] This assumes that the authority to confer degrees is authorized by the same agency for all types of institutions.

Chapters IV and V, concerning consumer protection and education standards, discuss specific legislative and regulatory remedies for improved state licensing. Chapter VI summarizes the main findings of this study and suggests next steps for analytical and legislative (or regulatory) purposes.

II. PRINCIPLES FOR STRENGTHENED STATE LICENSING

State licensing of proprietary institutions is an activity that occurs, to some degree, in all fifty states. And yet, standards for state licensing are inconsistent (and sometimes contradictory) on an inter- and intra-state basis. This means that policies and procedures vary considerably across state lines, as well as among the agencies in a particular state which are charged with the licensing of proprietary institutions. Despite efforts in the past to achieve some level of uniformity or consistency in the licensing of colleges and schools (as with the ECS model legislation, mentioned earlier), today licensing is a highly inconsistent and fractured process. This has been one of the main stumbling blocks in attempts to achieve reform of state laws and regulations, from both the state and national perspectives.

In order to provide some sense of commonality and uniformity in the efforts to strengthen state licensing standards and procedures, this study has attempted to devise a series of principles upon which specific remedies should be based. These principles provide the context for reform of state licensing. They are:

1. A license to operate a postsecondary institution must be conditioned on a reasonable expectation of business viability and success.

The financial and administrative capabilities of an institution are important barometers of the general well-being of an institution. As has been shown in several recent studies, poorly managed institutions are often the same institutions which demonstrate poor performance regarding education standards and the protection of consumers.[13] Lax recordkeeping, poor performance with respect to financial matters (such as late payment of tuition refunds or an inability to obtain a surety bond), and other factors are usually indicators of these administrative and financial deficiencies. Furthermore, strengthened standards for business viability may cut down the number of sudden closures that have occurred in the past.

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[13] For example, audits of 26 proprietary institutions in New Jersey in 1988 by the state guarantee agency found numerous problems regarding the administration and financial capabilities of schools, including missing documentation from student records and late or never-paid tuition refunds. Of the 26 schools that were audited, only four were not subject to some administrative sanction by the state, and several closed soon after the audits were performed. See New Jersey Interagency Task Force on Proprietary Vocational Schools, Ibid., pp. 2-3.

"Reasonable" standards of business viability and success may vary somewhat by state. Consideration for the type of program being offered, and the population served by the school, may also be taken into account. Nevertheless, close scrutiny of the administrative and financial capabilities of an institution is appropriate and should be an integral part of both the initial licensure and relicensure processes.

2. In the event of the business failure or sudden closure of a school, students must be financially protected and given the opportunity to complete their program of study.

One of the most damaging problems associated with inadequate state licensing standards frequently comes to light when an institution suddenly closes its doors and leaves students both untrained and often unable to recoup their financial losses in terms of prepaid tuition. This has been one of the more fruitful areas for journalistic forays concerning proprietary schools, in part because of the tremendous personal injury to (former) students caused by the failure of the school. Numerous cases of students left "out in the cold," with few avenues for legal redress and often student loan bills already or about to come due, have been documented in newspapers and periodicals across the country.[14] These stories have been one of the main engines helping to drive reform of state licensing, and have been a public relations nightmare for those proprietary institutions with reputable practices and programs.

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[14] See, for example, Joel J. Smith, "Millions in Loans Rerouted," Detroit News, February 19, 1990; Cathy Donelson, "FBI seizes Coastal Training Institute's records," The Montgomery (AL) Advertiser, April 19, 1990.

The protection of a student's financial investment in the school which he or she chooses to attend, and provisions for training that student should the school fail, have been central areas of successful reform in recent years. Both legislative and regulatory remedies have been implemented to meet this objective.

3. The state role in oversight and regulation involves assuring both consumer protection and educational quality.

Analytically, distinctions between what is meant by "consumer protection" versus "educational quality" are sometimes helpful, particularly to the extent that they can offer a framework for distinguishing between procedural requirements and those directly related to the teaching and learning process. However, in the practice of licensing schools, distinguishing between these two is usually arbitrary, since many licensing topics clearly cross both areas. It is apparent that the distinction between "quality" (usually assigned to the accreditation process) and "consumer protection" (traditionally viewed as the state's responsibility) is not grounded in the reality of current oversight systems. The two areas are inextricably linked at the state and other levels, and attempts to draw a dividing line between the two are counterproductive to the goals of educational opportunity and access to a quality education.

4. State financial support for existing or strengthened licensing standards must be adequate to ensure proper enforcement.

Without adequate resources and personnel to regulate institutions, additional rules or laws will do little to strengthen state oversight. In fact, the raising or strengthening of standards on the one hand, while denying adequate resources to fulfill that obligation on the other, is a cruel hoax perpetuated on the consumers of the programs being regulated. This is because the state creates an appearance of greater involvement and oversight without actually being able to deliver on that promise.

State financial support does not necessarily have to come in the form of a specified increase in state appropriations to support regulatory functions. Other methods, including the granting of broad authority to impose or increase fees, and the dedication of experienced personnel from other state agencies, can also be used to fulfill this objective.

5. Standards governing institutional licensing must be fair and equally applied, particularly with respect to credentials with similar titles.

The principle of fairness and equity applies to both the institutional licensing process as well as the criteria used to judge institutions and programs. One way this can be accomplished is by providing assurances that a similarity in educational content and standards is reflected in the degrees or credentials awarded, regardless of whether that credential is awarded by a public, private/non-profit, or proprietary institution.

The principle of fairness also dictates that the proprietary sector not be singled out for educational standards that are not applied to other types of institutions. If, for example, states expect to examine employment performance of graduates in occupational programs in the proprietary sector, such standards should apply to similar programs in the public sector.

Furthermore, the principle of fairness requires that institutional licensing should not become such an unwieldy process that it becomes an extraordinary burden on reputable institutions. The objective of regulation should be to allow quality institutions to pass easily through the net of accountability, while snagging those of low quality which put consumers and the public and employers at great risk.

This does not mean that all postsecondary institutions should be regulated by an identical set of rules and regulations; in fact, the need for some differentiation in standards for non-profit and for-profit institutions has long been accepted as standard practice in most states (and has been affirmed by the courts). Proprietary schools require, for example, a different set of consumer protection provisions, given the possibility of sudden business failure. Furthermore, since the majority of proprietary schools provide short-term programs that are vocational in nature, the educational standards applied will likely be significantly different than those found in degree-granting programs. Given these differences, however, we urge states to judge their licensing regulations primarily against the criteria of fairness and equal standards for similar types of programs and credentials.

6. Coordination and consolidation of state licensing should be implemented to the greatest extent possible.

In many states, licensing of proprietary institutions is a disjointed, uncoordinated process involving multiple agencies. In some, the number of agencies is not even known, let alone the practices and procedures of each of those agencies. Furthermore, fragmentation of responsibility often results in neglect of licensing functions. These have been critical stumbling blocks in those states seeking to reform their laws and regulations.

An awareness of the activities of all agencies with responsibility for regulating schools should be the first step in any attempt to comprehensively overhaul a state's statutes and rules. The sharing of information among existing agencies is also an important step. Where overlap of responsibilities and activities are clearly evident, maximum effort should be applied toward consolidating those functions and eliminating administrative waste and burden.

III. GOVERNANCE

In examining the methods and effectiveness of state licensing of proprietary institutions, one is struck by the diversity of regulatory and administrative vehicles used by the states to fulfill their obligations to students and taxpayers. For example, of the 20 states included in this study, no two have identical governance structures. In many states, governance is less a coordinated statewide activity than it is a loose confederation of agencies performing seemingly similar functions.

When discussing the reform of licensing practices and procedures, it is necessary to also explore whether or not the current governance structure is suitable to the purposes being served. For example, when California revised its laws governing proprietary school oversight in 1989, it chose to create a new, independent Council for Private Postsecondary and Vocational Education. Other states which have recently revised their laws have chosen other methods — as with New York in 1990 — to refine their existing regulatory structures and framework.

As broadly construed, governance also includes issues related to the personnel who staff the agencies and the ways in which oversight is budgeted and paid for by states. Governance also concerns the process of licensure and the role of those being governed (the schools) in the oversight process. Each of these is explored in this chapter.

Models of Governance

The diversity of governance models related to proprietary school oversight is in one way not surprising: they are as diverse as are the states themselves, reflecting the particular history of educational governance in that state and the overall structure and operation of the state government. Still, it is somewhat surprising that there is not some rudimentary similarity among the states in their organizational structures. After all, one intended purpose of the 1973 ECS model legislation was to establish more uniformity in the educational licensing structures of the states. Likewise, the fact that the federal government requires all institutions seeking to participate in federal student aid programs to be licensed by the state in which they operate suggests that some uniformity across the states could be assumed.

The reality that neither the 1973 ECS model legislation nor the federal student aid institutional eligibility requirements have had much effect on governance structures may be more an artifact of inattention than ineffectiveness. For instance, after the ECS model legislation was adopted, several states moved toward the model that was proposed. Similarly, following the creation of the Pell Grant program in 1972 and the codifying of the "triad" of student aid oversight mechanisms, much discussion of the role that particular state agencies should play in the licensing aspect of the triad also occurred.[15] However, over time each has been allowed to gradually fade into the background. The ECS model was quietly overridden in some states or simply ignored in others. And discussion of institutional eligibility in the student aid programs was eclipsed by other issues, including middle income student needs and the rapid growth of the programs overall.[16]

No "ideal" model of governance likely exists. There are probably advantages of certain organizational structures over others. For example, we are inclined to believe that concerns about educational quality will lead states to consider postsecondary-oriented structures over others. Nevertheless, the particular history of licensing in a state, the political climate for reform of a state bureaucracy, and the perceived adequacy of the current structure must be gauged. In some cases, changes to the structure may be needed but not feasible, while in others changes may not be necessary at all. To avoid entangling the discussion of reform of particular licensing practices and procedures in the labyrinth of organizational structure, we have not suggested one model of governance to which all states should adhere. Instead, the following five basic models of good governance are offered, with a discussion of the strengths and weaknesses of each:

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[15] This was perhaps most widely discussed at the so-called "Keystone Conference" in 1976. See Bender, Ibid.

[16] This issue finally came to a head in 1978 with the passage of the Middle Income Student Assistance Act, which eased middle income student access to aid programs.

1. The Consolidation Model

In this model, all licensing and oversight authority is vested in a single, existing agency. This means that licensing for degree granting institutions, non-degree granting institutions, and specialized programs that traditionally have come under separate agencies (such as cosmetology and truck driving) is consolidated into one department or agency. The agency may or may not use different divisions within the agency to handle subsets of institutions. Given the increasing emphasis being applied on both the consumer protection and educational quality functions, this agency is likely to be one that already possesses postsecondary educational responsibilities.

The best current example of this model is the Colorado Department of Higher Education, which recently assumed responsibility for licensing virtually all proprietary institutions in the state. An administrative unit within the department, the Division of Private Occupational Schools, is primarily responsible for the licensing of schools. This unit reports to the chief executive of the department, who is also the executive director of the Commission on Higher Education. No separate board governs the activities of licensing within the unit, nor does the Commission govern this function. Rather, sole authority rests with the chief executive.

The central advantage of this model is the uniformity of standards applied to all institutions. Students attending private career schools are not subject to differential standards solely based on the type of program in which they choose to enroll. Further, the consolidation of functions combined with the ultimate responsibility being placed in the hands of an administrative official (rather than a board) likely makes the task of regulation (as opposed to policy making) more streamlined and effective. Also, to the extent that the agency is likely to be one with some experience in postsecondary education, greater coordination for the full range of state postsecondary educational services and planning would likely occur.

Conversely, this model does not offer as much public accountability in the same way that a board, charged solely with the oversight of schools, might. Nor does it offer as much programmatic expertise as other models of governance (because the agency does not have licensing as its sole or primary function). Also, the agency in which the consolidation takes place will have to demonstrate a capacity to perform the tasks of licensing in a manner more efficiently (especially from a budgetary standpoint) than with the previous system, or else risk a public confidence crisis that might result in diminished effectiveness.[17]

2. The Licensure Board Model

Licensure boards appear to be making a comeback in the world of state proprietary oversight. California is the most recent state to choose this model, following in the footsteps of Ohio, Indiana, and others.[18] With this model, licensing/oversight authority rests with an independent board consisting of appointees from the governor, legislature, other state agencies, public members, or some combination thereof. This separate agency usually deals exclusively with the licensing and regulation of proprietary colleges and/or schools, and is not tied administratively or budgetarily to the fortunes of any other state agency.

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[17] For instance, if the agency in which the consolidation occurs were to request state appropriations or spending authority in excess of what had been the sum for the previous set of agencies, policymakers might question why the consolidation was necessary. This could erode support for the agency's licensing activities and eventually hamstring its efforts.

[18] The Indiana Commission on Proprietary Education has been in existence (under various names) since the early 1970s, and predates most of the other independent licensure boards.

The California Council for Private Postsecondary and Vocational Education, for example, began operation as an independent licensing agency on January 1, 1991. The Council is composed of 20 members, including 15 appointed by the executive and legislative branches and five nonvoting members representing state agencies. Staff of the Council shoulder the majority of the workload of the Council, with an executive director and an estimated 40 total staff performing the day-to-day functions of the Council.[19]

The obvious advantage of this model is its concentration exclusively on the tasks of licensing and regulating institutions. It does not have to engage in intra-agency discussions about the nature of its operations or its annual budgetary needs. Licensing units within larger agencies frequently must compete for the attention of the agency's executives and are sometimes disadvantaged budgetarily. School licensing is often low on the overall priority list of larger agencies[20], and therefore may be ignored unless some widely publicized scandal is revealed.

Another reason that the licensure board model is attractive is its expertise. An agency whose primary or sole function is to license or regulate institutions is likely to attract both board members and staff with direct experience and knowledge of the industry and its operation. Given the diversity of the proprietary sector in terms of the kinds of programs that are offered, this may be an important advantage.

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[19] As of this writing, no staff have been hired.

[20] Such as departments of education or higher education, which have broader missions, or even cosmetology boards, which often see their primary role as one of licensing practicing cosmetologists through the administration of examinations. School licensing is a tangential, or auxiliary, responsibility for many of these agencies.

The central disadvantage of this model is that it runs the risk of being dominated by the schools. While school owner representation on a licensure board is possible, overrepresentation could ultimately harm the effectiveness of the agency. Any governing body that is controlled by the governed runs a significant risk of losing its credibility and effectiveness.

Another drawback of the licensure board model may be its independence in the state agency system. This is because the board may be lost in the overall state bureaucracy of large, wealthy departments and agencies. In states which currently have independent licensure boards, many state officials are not even aware of the board's existence, a fact that could severely damage the ability of a board to secure adequate funding and political support for its activities.

3. The Coordination Model

This model likely represents the least change from the current licensing structure in many states. In this structure, the current set of agencies with licensing or oversight responsibility consciously work more closely to coordinate activities and avoid duplication or inconsistency.[21] This would include, but not be limited to, regular meetings among agency staff, a formal process of sharing information on schools, uniform data collection procedures and requirements, and joint monitoring visits to regulated institutions.

No state participating in this study has achieved the level of coordination necessary to make such a model fully effective. Significant changes would be necessary in order to completely implement this kind of a system. However, some states do have practices that are a first step toward incorporating this model. For example, the Alaska Commission on

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[21] These would include the licensing agencies for degree, non-degree, and cosmetology programs, as well as state guarantee agencies, welfare agency representatives, and others which have a direct interest in the well-being of the schools or their students but which are not directly involved in the licensing of schools.

Postsecondary Education, which is the primary regulatory body for that state's degree and non-degree granting institutions, conducts joint site visits with the Board of Barbers and Hairdressers in the licensing of cosmetology schools. And the New Jersey Higher Education Assistance Authority and the state Department of Education have worked on sharing information about schools, particularly if potential problems affecting the school's stability and integrity are uncovered.

Coordinated licensing and oversight within an existing framework is advantageous because it requires the least amount of legislative intervention. In those states where legislative action is least likely, this model offers a comfortable middle ground that may help to achieve improved standards and procedures. It is also the least likely to adversely affect the current bureaucracy, which may have the benefits of experience and funding.

Clearly the downfall of this model is its limited effectiveness. The fact that most of the agencies contacted for this study expressed some level of dissatisfaction with their own performance, or the performance of other agencies, indicates that coordination may be a necessary but not sufficient component of improved state licensing. Further, in some states the licensing process may be hindered by a few persons who perform the actual licensing, a situation which is not affected by stepped up cooperation and coordination.

4. The Dual Licensing Model

While this is probably the most complicated of the models, it may also hold out the prospect of being the most effective. Dual licensed schools would essentially have to go through two processes in order to operate and teach students. First, all schools would have to meet an institutional licensing requirement, which would include a review of the general financial stability, administrative capability, and regulatory compliance (such as fire and health standards) of the school. This institutional licensing would be conducted by a single agency with responsibility for all eligible institutions.

Schools passing the institutional portion of the process would then have to go through a programmatic approval process, where the curriculum, equipment and facilities, and other factors concerned with education standards would be examined. This would be conducted by an agency different than the institutional licensing agency and would likely be an agency with considerable educational experience. This agency could appoint lay boards (or simply site visit teams) that would be composed of persons practicing the skill or trade, employers, and others with a knowledge of the subject area and labor market.

This governance model amalgamates parts of the activities of private accrediting organizations, Private Industry Councils which operate in the Job Training Partnership Act (JTPA) program, other vocational education oversight bodies, and current state licensing agencies. And to a certain degree, states do perform many of the activities required in this process. For example, many states have cosmetology boards composed primarily of people who have a thorough understanding of the job skills required and the demands of the labor market. The institutional licensing functions performed by cosmetology boards would be roughly equivalent to the tasks associated with the programmatic approval process in this model. However, no state has in place the complicated mechanism of the dual licensing model.

Dual licensing offers a high level of consumer and taxpayer protection because it requires independent, separate analyses and approval of the institution's activities and purposes. Schools which are superbly managed business enterprises but offer limited educational opportunities to students, or, conversely, schools which provide an adequate education but are poorly managed and operated, would not be allowed to slip through the web of state oversight. In this scenario, both governmental and student interests are protected.

The flaw in the dual licensing model may be its administrative complexity. This is particularly evident with the programmatic approval process, where conceivably dozens of boards or committees would need to be established in order to adequately review the hundreds of kinds of programs available at proprietary institutions. Thus the tradeoff between administrative (and perhaps financial) burden for the state versus higher levels of student and governmental protection are clearly displayed in this model.

5. The Student Aid Agency Model

This model has some similarities to the consolidation model because it requires the collapsing of licensing functions into a single, existing agency. The student aid agency model goes a step further, however, by also requiring that state student aid functions — including loan guaranteeing and state grant awarding — also originate with this agency.

The closest approximation to this model currently on the books is in Georgia, where the Georgia Higher Education Assistance Corporation will soon be assuming licensing responsibility for many of the state's proprietary schools.[22] As the state's guarantee agency, the GHEAA will also be performing the licensing functions formerly performed by the state Department of Education, and others. As currently written, some kinds of schools — mostly notably cosmetology schools — have been exempted from the provisions of the new law, although there will likely be attempts in the spring of 1991 to change the law and fold these schools into the unified licensing and oversight agency.

This model directly addresses the linkage most frequently cited as the root cause of "problems" associated with proprietary school oversight: institutional eligibility and the receipt of student aid. With the same agency licensing schools and guaranteeing loans (and conducting the required program reviews under federal law), considerable leverage can be applied to institutions with marginal performance in the student aid area, especially student loan defaults. This model also possesses the same advantages as the consolidation model.

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[22] The "Nonpublic Postsecondary Educational Institutions Act of 1990" becomes effective on July 1, 1991.

The student aid agency model also presents a major concern: how can an agency whose primary interest and experience is in loan guarantees, lender relations, and financial and administrative procedures, also be responsible for upholding the state's interest in preserving educational standards? The credibility of the agency may be called into question. Further, with multi-state guaranteeing now common in the federal student loan programs, many schools may choose to have loans for students attending their institutions guaranteed by an out-of-state agency, thereby limiting the effectiveness of the unified approach.

Consolidation and Coordination of Governance

Regardless of the current organizational structure of a state's system of state licensing, several important issues regarding the consolidation and coordination of oversight should be addressed. As noted in the previous discussion of the coordination model, eliminating overlap of tasks and streamlining operations can be an important step in improving state oversight. Agencies which perform the same tasks, or which examine similar documents, data, and records, should share such information and seek ways to eliminate duplicative efforts. Likewise, state agencies should seek avenues for regularizing interagency contacts in order to anticipate problems and work cooperatively with schools that might be experiencing problems.

Perhaps the most important reason for consolidating and coordinating governance is that varying standards can be reduced or eliminated. With multiple agencies governing licensing, different institutions are subject to differing standards based solely on the type of program or credential they offer. This is inequitable to both students — who are treated differently depending on the institution in which they enroll — as well as institutions. Further, eliminating duplicative requirements from multiple agencies can reduce the regulatory burden on schools.

Coordination and consolidation can also be strengthened through improved data collection and dissemination efforts. Many states have only recently begun collecting basic information on enrollments, outcomes, and other matters. These states as well as those with established track records of data collection should ensure that the information collected is consistent across agencies. Formal processes of dissemination and information sharing should also be established. For example, during the deliberations of the New Jersey Interagency Task Force in 1989, it was discovered that those at the table were unaware of the data collection and compilation efforts of the others. A report that had been produced the previous year by the Department of Higher Education on student loan defaults, which received prominent attention nationally, was unfamiliar to representatives of many of the other state agencies. These situations can be avoided through formal interagency councils or committees, composed primarily of the people who deal with the data or produce reports.

States should also seek ways to draw on the resources of their own agencies which are involved in tasks similar to licensing. For example, veterans education programs sponsored by the Veterans Administration are approved at the state level by designated State Approving Agencies (SAA). The SAAs assist the VA in monitoring compliance with federal law and function primarily to approve courses at training sites. While this is somewhat different than the institutional and programmatic approval processes usually associated with state licensing, there clearly are significant areas of overlap between the two. In fact, in a limited number of states the SAA function is performed by the primary state licensing agency. However, in many others these functions are separated and therefore do not receive the benefit of each others' experience and counsel.

Finally, state agencies should also work more closely throughout the licensing process to better understand employer needs and job requirements. Close, ongoing contact with employers--through statewide labor market councils or board--should be rigorously maintained by all licensing agencies. Information obtained from employers about labor market needs should also be shared among agencies.

Staffing of Reformed Governance Structures

While the central thrust of this report is to recommend ways in which state licensing practices and procedures can be improved (either through legislative, regulatory, or administrative means), the reality is that little reform will actually occur without adequate staff to enforce new laws and regulations. In fact, changes to laws or regulations without adequate enforcement capabilities could be interpreted as regressive because they promise tighter standards to consumers without being able to substantially deliver on that promise.

The question of how best to staff an agency, or division responsible for licensing is a complex one. The agency structure, extent of regulation required (especially the frequency of site visits), financial resources, and other matters must be carefully weighed in order to determine the appropriate level of staffing needed. Each state must carefully consider these factors before deciding on an appropriate staffing goal.

In general, most of the states participating in this study exhibited inadequate numbers of staff needed for enforcement of existing laws and regulations. In fact, in some states the numbers of staff currently employed clearly results in the failure to enforce critical aspects of law or regulation.[23] For example, in Missouri, the Coordinating Board for Higher Education is able to support less than two FTE positions for the licensing and regulation of more than 150 degree and non-degree granting schools. Because of this dire staffing situation, site visits are seldom conducted and usually occur only after a complaint has been lodged. This reactive approach to oversight is not uncommon and is an indicator of inadequate consumer protection.

In terms of the number of staff needed to support a licensing operation, the general rule of thumb appears to be a minimum of one FTE for every 25 schools being regulated. This assumes that relicensure, including formal application and site visits, takes place on an annual basis. Some states will require more staff than this, especially if new laws and regulations are being implemented or if the agency does not have a core staff of experienced regulators.

Perhaps more important than the numbers of staff needed for adequate enforcement is the types of staff needed. Both the skills and quality of staff can often make up for shortfalls in numbers. In addition to a chief executive and clerical and support staff, agencies should also seek to employ staff in the following areas:

Investigative/Field Staff — Each agency should have trained field staff to conduct site visits, investigate complaints, and maintain contacts with schools on a personal basis. Investigators ideally should work in teams on site, thereby helping to ensure accuracy and speed the process of investigation. Field staff should be allowed to spend at least one half of their time at the office in order to answer queries, file reports, and expedite any administrative penalties imposed.

Accounting/Financial Staff — The collection of financial information from schools — information on tuition revenues, student aid receipt, refunds paid, etc. — is one of the most important tasks in the licensing process. However, staff able to interpret and analyze this information are sometimes unavailable, thereby limiting its utility. Persons with the ability to read and digest financial statements, audit reports, and other materials can play an important role in the early identification of schools with the potential to close suddenly or which exhibit signs of financial irregularities.

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[23] This is not a criticism of the quality of the staff in these states. In fact, in many of the understaffed states the commitment of the existing staff to do the maximum amount possible with the personnel available is exceptional.

Education/Training Specialists — People who know about educational techniques, curriculum standards, and the skills needed to perform jobs are often not included on licensing agency staffs. Yet training specialists can provide a valuable service by examining the most important task of any school: educating students. Persons hired as training specialists can be former educators, persons with vocational administration backgrounds, or recently employed in the world of skilled trades.

Legal Staff — In-house legal staff is also currently a rarity for most state licensing agencies. Many rely on legal staff who work on many broader tasks for a larger agency, or who are assigned to the licensing agency by the Attorney General. The lack of direct experience in licensing issues and proprietary school regulation can often be a hindrance to the professional staff of the licensing agency seeking legal advice or assistance.[24] We believe that the ideal staff would include at least one full-time attorney who is able to devote her or his time exclusively to the concerns of that agency. The ability to work closely with field staff/investigators may also help to improve the quality of enforcement.

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[24] Several study participants suggested that the quality of the legal staff assigned to them was often disappointing. Either because of the perceived lower priority of proprietary school licensing by a larger agency, or because of limited staff in the office of the attorney general, legal support was termed by some study participants to be "sub-par," "inexperienced," and "half hearted." However, some states did report excellent legal staff.

Paying for Oversight

The amount of resources a licensing agency has to enforce laws and regulations is usually a determining factor in assessing the agency's effectiveness. While "more money" is a common refrain for state bureaucrats seeking to improve their own performance, the plea for funds in this case is often justified. The poor levels of staffing evident in many of the states participating in this study suggest that state resources have generally been sparingly available for licensing functions.

Currently, there are two general ways in which licensing agencies pay for their oversight activities: direct state appropriations, and fees. Historically, state appropriations have been the predominant method of funding licensing activities. Fees, collected from institutions, teachers, commissioned agents, and others, have seen a resurgence in recent years.

The decision whether to rely primarily on state appropriations or fees is state-specific. In most states, some combination of appropriations and fees to fund the agency's activities is probably reasonable. However, the tradeoffs between the two are clear. With direct state appropriations, a commitment by the larger agency (or the state government on the whole) is demonstrated by the relationship between the amount of the agency's request and its final appropriation. State appropriations also benefit the licensing operation's long-term prospects because they establish a track record of budgetary support.

Fees have a significant advantage in terms of the amount of funding that can be generated. As opposed to relying on the whims of the state legislature, a licensing agency can often use fees to meet its budgetary needs — provided these needs are reasonable. Further, fees directly tax those being regulated, and can therefore be raised if increasing regulation is needed.

However, one important drawback of fees is that they may place the well-being of the agency — and the employment of its staff — in the hands of those paying the fees. To this extent, a gray area of potentially dangerous reliance on the schools being regulated exists. As one study participant noted, the risk of impropriety, or at least the appearance of impropriety, may increase if fees are the exclusive or dominant form of agency funding. Excessive fees may also be burdensome on schools and will eventually be passed on to students in the form of tuition increases.

In addition to direct state appropriations, several fee-based approaches have been devised by the states to help pay for licensing functions. These are described below.

Flat Fees

Most states charge some flat fee for the licensure and relicensure of schools. The fee may range from as little as $25 per year to more than $2,000 in some states. Differential fee schedules often apply for licensure and relicensure. These fees are not based on the enrollment of schools, institutional revenues, or other standards. Several of the states participating in this study, including Alaska, Hawaii, and others, rely on flat fee structures. Some states require teachers, recruiters, and others employed by proprietary schools to be licensed by the state, and in those that do most require some nominal flat fee (from five to more than 100 dollars per year) from these individuals as well.

Enrollment-Based Fees

Several states have established enrollment-based fee structures for the licensing of schools. The main rationale for this structure is that schools with higher enrollments are generally more of a regulatory burden to the state agency. More records must be examined and site visits usually are more detailed as school enrollments increase.

For example, in the District of Columbia, a sliding scale is used to determine the annual licensing fee. This scale is based on the annual FTE enrollment of students and is structured as follows:

FTE Students	Annual Fee
0-100	$ 25
101-250	$ 50
251-500	$100
501-1000	$250
1001 or more	$500

Institutional Revenue-Based Fees

The fastest growing form of fee schedule is based on the gross tuition revenues of the school on an annualized basis. This has been positively received in many states because of its perceived equity. As with the enrollment-based fee, this form of fee is based to some degree on the regulatory burden placed on the agency: schools with more revenues often have more paperwork for the licensing agency's employees to pore through, thereby consuming a larger portion of staff time than smaller schools. Further, a strong argument for the revenue-based fee can be made on ability to pay grounds: schools with more revenues can afford to pay more for their oversight, while smaller schools may not be expected to pay as much.

New York's licensure law, which became effective in late 1990, requires all institutions to pay a fee equal to 9/10ths of 1 percent of the school's gross tuition revenues. This fee is used to pay for the expenses of the Bureau of Proprietary Schools Supervision and other costs of regulation.[25]

Hybrid Fee Structures

Several states have enacted financing schemes which incorporate flat fees with enrollment or institution-based fee schedules. Missouri, Ohio, and other states use hybrid schemes which use the sliding scale concept but set minimum and maximum annual fees — in the case of Missouri, $100 and $1500, respectively. In Texas, the original license (or certificate of approval) is a flat fee of $2,550, and the first annual renewal is $2,100. In subsequent years, the fee is based on ranges of gross tuition revenues, as follows:

Gross Tuition and Fees	Annual Fee
<$50,000	$ 825
$50,000 - $100,000	$ 975
$100,000 - $250,000	$1125
$250,000 - $500,000	$1275
$500,000 - $750,000	$1425
$750,000 - $1,000,000	$1575
$1,000,000 or more	$1725

Supplemental Fees

Some states have begun to charge schools for special or unusual tasks that they perform on behalf of the school. These fees are justified on the basis of oversight burden caused by special actions or requests made by the school. For instance, Texas charges a supplemental fee of $270 for a change in address of the school, $225 for the addition of a course, and $600 for the investigation of a complaint against a school if the school is found to be at fault. Wisconsin and other states are also exploring ways to charge specific fee amounts for additional or unusual tasks.

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[25] In effect, only 7/10ths of 1 percent is applied to regulatory and oversight functions. The remaining amount is used to finance a tuition reimbursement fund.

Role of Proprietary Schools in Governance

In most of the states participating in this study, proprietary institutions play a limited role in the governance process. This is usually a conscious decision made on the part of state legislators or regulators, who fear that school owners could unduly influence the process of licensing and oversight. State agencies, however, can maintain independence and still find ways to involve school owners or directors in the governance process. This regular contact can be an important benefit to the state.

Informal contacts between state licensing personnel and school owners plays a significant part in governance in many states. Information requests, complaint investigation, and dispute resolution can often be handled without formal contacts and procedures. States which rely heavily on formal processes sometimes experience strained relations with schools and an increased workload burden.

Maintaining relations with state proprietary school associations is another way to involve schools. State associations can be helpful to agencies in conveying ideas, avoiding miscommunication, and thwarting misconceptions. However, contacts with state associations are usually limited in effectiveness because they frequently represent only a small subset of the state's overall contingent of proprietary institutions. Competing associations can also present problems from the state perspective.

Perhaps the best way that schools can be involved in the governance process is through advisory boards or commissions. States which have advisory boards cite two positive purposes that are served. First, they allow schools to formally raise issues of concern with state officials. This structured form of input on the part of schools ensures that legitimate concerns and problems are raised, and also allows the state to respond formally to these issues. Second, advisory commissions can be used to "test the waters" as states consider implementing new laws or regulations. Obvious problems can be resolved before new procedures or practices are implemented, thereby easing the transition to a new system. The advisory panel system works well in several states, particularly Illinois, where both institutions and regulators appear to derive positive benefits from the experience.

In general, the inclusion of proprietary school representatives on oversight bodies with direct authority for the licensing of schools is not desirable. While knowledge of the proprietary sector in general and vocational education in particular is an important component for an oversight body, the potential for conflict exists if school owners or their designees serve on licensing boards.[26] Representatives of industries that hire significant numbers of proprietary school graduates, vocational education and training specialists, state agency representatives, and members of the general public are all appropriate persons to consider for oversight bodies.

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[26] This rationale is similar to that used by many states to limit the inclusion of institutional representatives on statewide boards for higher education. There is no compelling evidence to suggest that boards governing proprietary schools should be treated differently in this regard.

Monitoring Requirements

The topic of governance cannot be raised without covering some of the broader themes associated with the monitoring of school compliance with state laws and regulations. While later sections of this report deal with specific components of the monitoring process, there are a few broad topics that should be highlighted.

First, the process of monitoring is uneven and infrequent in many states. While the majority of states participating in this study require schools to be relicensed annually, the steps in this licensure process vary considerably. In some states, a rigorous review of the school's application for relicensure, site visits, data reporting requirements, and other issues are closely scrutinized before the school is relicensed. In others, at least a good faith attempt to monitor the schools and visit them is made on a semi-regular basis. Unfortunately, in many states schools are seldom or never visited by field staff unless a complaint os lodged against a school by a student.

Prevention may be the most important concept to which licensing agencies should adhere. While enforcement may be the most time and resource consuming aspects of the licensure process, enforcement ultimately seeks to redress wrongs already committed. Prevention involves regular monitoring and contact with schools in order to avoid the need for costly and difficult enforcement measures. We recommend that all schools be relicensed annually, with at least one site visit for each school (either prior to relicensure or within some specified time period immediately afterwards) and more frequent visits for schools that the state encounters problems with, either because of previous site visit findings or because of student complaints.

The process of relicensure should include enough lead time on the part of the state to allow schools to adequately meet the state's requests. Application packets, including copies of state laws and regulations, copies of al necessary forms, and perhaps a checklist of steps leading to relicensure should be included. For initial licensure, the state should walk through the steps with the prospective licensee, preferably in person, in order to ensure that all requirements, fees, and procedures are understood. This can go a long way toward establishing a good rapport and avoiding potential problems or complications down the road.

Joint site visits with accrediting organizations, guarantee agencies, and other state agencies should also be explored by states. While these joint efforts usually cannot be compelled, if properly conducted they can be mutually beneficial to the state licensing agency and the other organization. For instance, the Indiana Commission on Proprietary Education works with the national accrediting organizations in order to (ideally) have a state representative on all accrediting visits. While the state employee is not a formal part of the study team, he or she does derive the benefit of the collegiality with the other site visit team members. The accrediting organization also gains a better appreciation of the state's tasks and may learn facts about the school from the state representative that it may not otherwise have gleaned.[27]

Disciplinary Action and Penalties

Many states currently have no monetary or punitive penalties that can be imposed on schools violating legislative or regulatory provisions. This lack of authority on the part of the state leaves the revocation of the license as the only avenue for redress. This is a costly, and sometimes lengthy, process for the state to pursue, and as a result is infrequently utilized.

States without disciplinary provisions or administrative penalties incorporated into their laws and regulations should implement them. The licensing agency should be empowered to disapprove school personnel credentialed by the state for willful violation of state law and regulations. The state should also be empowered, upon the recommendation of an administrative hearing officer, to impose civil fines on schools for the more serious violations. For example, New York law authorizes the imposition of up to a $25,000 fine for operating a school without a license, use of deceptive or fraudulent advertising, offering an unapproved program, and other violations. Subsequent offenses are subject to a fine of $50,000 per violation. Criminal penalties may also be appropriate in those extreme cases where a pattern of willful violations has been established.

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[27] In Indiana's case, this site visit may also serve as the official state site visit.

States should also be empowered to suspend student enrollments at those institutions where a pattern of abuse or willful misconduct has been established.

IV. CONSUMER PROTECTION

The fundamental task of the state in the licensing of proprietary institutions is to protect the consumers of the education offered by these schools. Ideally, students should be protected prior to enrollment, while in attendance, and following graduation from the institution. Only if the needs of students are viewed as encompassing each of these time periods can the state effectively ensure that residents are being protected to the best of the state's ability.

The issue of consumer protection is defined somewhat differently in the various states. Some states view all of their activities related to the licensing of schools to be consumer protection. Others view the approval of schools to operate and the "license" as separate tasks. To avert a clash over the semantics of state oversight and regulation, we have chosen for the purposes of this study to distinguish between issues of direct educational quality versus those of an operational or procedural nature. There is no hierarchy intended in this distinction, only an attempt to examine similar issues in the same context.

Consumer protection issues are defined here as those that are concerned primarily with the financial and administrative aspects of an institution. Some, though not all, consumer protection issues can be evaluated by a state regulator without visiting the institution.[28] The issues covered under this heading have less to do with the educational product(s) delivered than they do with the ways in which school present themselves to students, the general public, employers, and the state.

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[28] Exceptions are noted in the discussion which follows. See page 55.

Advertising

States should regulate the ways in which proprietary schools advertise themselves to prospective students. With the growth of multiple forms of media, including newspapers, television, computer services, and marketing products,[29] the ability of states to regulate advertising has become strained. However, state vigilance on advertising can help to prevent unqualified or improperly induced prospects from being victimized by unscrupulous operators.

One irony of the significant concern raised about proprietary school advertising is that it is not a technique without merit or legitimacy. In fact, traditional colleges and universities, especially those with cooperative or adult educational programs offering the benefits of convenience and hands on experience, have taken the lead from the proprietary sector and now regularly advertise. The important factor for the state is to ensure that the advertising does not make or imply promises that are not supportable by the evidence. The burden should be on the institution to support any claims made (see Appendix for an example of regulations governing advertising, from Texas).

Advertising standards in state law or regulations should contain provisions covering at least the following topics:

- The use of the state name in any advertising should be prohibited, except for a single line indicating that the school is licensed by agency X and describing the time period of that licensure.
- Advertising in the classified advertising section of a newspaper under the Help Wanted or other headings should be prohibited.

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[29] Matchbook covers, flyers and brochures available in public locations (such as buses and subways), and other non-traditional means.

- The use of data concerning graduation rates, job placement, or other outcomes measures in advertising should be forbidden.[30]

- Promises of student aid receipt, or possible aid award amounts, should be prohibited (reinforcing prohibitions already contained in federal student aid law and regulations).

- The use of the terms "college," "university," or the name of the state should be subject to the approval of the state.

- The depiction of a campus or facilities in any advertising should only represent that which is currently representative of that school.

- Language suggesting endorsement or accreditation by private organizations, trade unions, businesses, or other institutions should be approved prior to the publication or distribution of the advertising.

School Catalogs and Enrollment Agreements

Because school catalogs are the main vehicle through which schools convey their purposes, practices, and qualifications to students, many states have intricate laws and regulations governing their content. All prospective or enrolled students should be provided with a catalog.

Catalogs should contain at least the following kinds of information:

- official information regarding the school's name, address, owners, and faculty

- identifying information on each course or program of study, including when the program is offered, any specific entrance requirements, the name(s) of faculty, the course calendar, a brief description of the course's subjects or units, standards of progress (grades, attendance, and other requirements), and what credential will eventually be earned by successful completers

- a description of facilities and equipment that students will use

- data regarding recent trends in student graduation and job placement, using measures defined by the state

- a breakdown of the tuition and fees charges, as well as any additional charges for books, supplies, tools, etc.

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[30] One exception to this could be if the advertisement is approved in advance by the state, which would verify the data published.

- policies regarding tuition refunds for students who never enroll, withdraw voluntarily, or are asked to leave the program
- a detailed description of financial aid programs and application procedures, as well as eligibility criteria, satisfactory academic progress, rights and responsibilities for loan repayment, and penalties for misuse of student aid or non-repayment of loans

Most states also require that enrollment agreements or contracts be approved by the state. Enrollment agreements are generally used by schools to gain a commitment from students to enroll in the institution and usually describe the rights and responsibilities of both the student and the school. One central part of the enrollment agreement should be the course catalog, or information similar to that which is required to be included in the catalog. In addition, thee enrollment agreement should spell out the cancellation privileges of the student (at least three days in most states), the location of any local vocational counseling centers, and the name and address of the state licensing agency or public advocate's office.

Reviewing School Personnel Credentials

States should play a role in assuring competencies on the part of school personnel, particularly those who come in direct contact with students or prospective students. The review of school personnel credentials should be thorough enough to ensure that current or future students are being adequately protected from fraudulent or untrained personnel, but should not be onerous to individuals or institutions.

Owners[31] should be subject to the most thorough review of credentials. The state police or some other agency should be involved to investigate if prospective owners have been convicted of any offense related to the operation of a school, including in other states. Further, states should consider following the lead of Alaska in requiring that credit checks of all owners be performed prior to their licensure. A poor credit record should be one criterion examined to determine the financial capabilities of the owner to successfully operate an institution. The general management and administrative skills of the owners, as determined by prior work experience and personal references, should also be examined.

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[31] Owners can include sole proprietors, partners, or corporate boards. The license to be an owner should not be confused with the institutional license (or the license to operate), which is the primary focus of this report.

Directors should be required to demonstrate an ability to competently handle the administrative functions of an institution. Directors should be high school graduates, with some management experience, or college graduates with courses in the appropriate subjects. Directors should also be required to complete a course in private school administration within one year after the initial license is granted.[32]

Teachers or instructors should be high school graduates and have at least one year of work experience in the subject area being taught. They should be required to take a course (three or more credit hours in length) in teaching methods at a state approved institution. Specific requirements for a particular occupation or subject area may also be appropriate.

Commissioned agents should be held to special standards for licensing. Because these agents earn their livings primarily through the number of students they recruit — and may work for more than one institution — the opportunities for deception or misrepresentation are great. Commissioned agents should therefore be required to submit to background checks by the state, and should be compelled to carry their permits with them at all times. Further, any employee who solicits or recruits students should be required to be a salaried employee of the school and earn the majority of his or her annual compensation as salary.[33] All commissioned agents should also be bonded by a surety.

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[32] New York's regulations require this course to be offered by the Department of Education. However, states may also consider approving courses offered at colleges and universities as a substitute.

The fee charged to license school personnel should be appropriate to the job being performed. It should be assumed that the person being licensed will be paying the fee out of personal expenses. Fees more than $100 per year are probably excessive for any employee of a school, though fees over this amount for owners may be appropriate.

Institutional Finances

The regulation of the financial abilities and operation of a proprietary school is one of the most important tasks of state oversight. As noted earlier, one of the most damaging outcomes associated with lax or insufficient regulation is that students are often financially harmed by schools which suddenly close or declare bankruptcy. The state's financial interest in a school, through state student aid programs or job training money, as well as the state responsibility for licensing schools as a condition of eligibility for federal student aid, also is important territory for the state to protect.

The regulation of the institutional finances of a school should be closely coordinated with student aid agencies, including student loan guarantors. Because these agencies are required to conduct program reviews on a regular basis, important information can be learned from the sharing of data gathered. Avoiding surprise school closings should be a major goal of the state licensing agency.

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[33] New York takes this requirement a step further by limiting the amount of the commission a recruiter can receive as a bonus. This limit cannot exceed one percent of the annual salary paid to the agent, per student. More significantly, the state requires that the bonus be paid only if the student completes a certain portion of the program of study, thereby linking the student's performance to the recruiter. The legality of this approach was recently upheld in federal court, where it (and other provisions of New York's law and regulations) was challenged by one of the state's proprietary school associations. See the opinion of Justice Sweet in denying the motion for a temporary restraining order blocking the implementation of the New York statute: New York State Association of Career Schools, et al., vs. State Education Department of the State of New York, U.S. District Court, Southern District of New York, 90 Civ. 5560.

Institutional finances should be regulated by requiring schools to meet standards in the following areas:

Tuition Refund Policies

Tuition refund policies take up a significant portion of the total body of laws and regulations governing proprietary institutions in many states. Because tuition refunds are such an important part of the requirements of student aid programs, they also are closely watched by the federal government, guarantee agencies, and state grant programs. Unfortunately, the consistency among required refund policies is sometimes uneven — including the suggested refund policies put forth by accrediting organizations. States should therefore play a more definitive role in setting minimum standards for tuition refunds.

The most equitable form of tuition refund for students is one that is term or semester based and which loosely fits the criteria of being "pro rata." The high water mark of tuition refund policies required by the states may be that set by the Wisconsin Educational Approval Board. Schools licensed by the Board must adhere to refund standards that are set out in considerable detail in state regulations (see Appendix for a complete copy of the Wisconsin provisions covering tuition refunds).

One important part of any regulations covering tuition refund policies should be the principles upon which the standards are based. Because tuition refunds can be a complex and confusing process, a simple statement of the state's objectives and philosophy regarding these refunds can help to clarify its intents and purposes. These principles should clearly state the consumer rights of students, the responsibilities of institutions from the signing of the enrollment agreement to the student's withdrawal or graduation, and the increasing responsibilities of students as the course of instruction progresses (see Appendix).

In general, schools licensed by a licensing agency should be required to pay a full refund to students who withdraw prior to the first day of classes. Once the student begins classes, the tuition refund should be based strictly on the portion of the program of study that has been completed by the student. Schools should be allowed to keep an administrative fee — no more than 15 percent of the total cost of instruction — beyond the pro-rata refund. Schools should not be allowed to keep the full amount of tuition and fee charges until at least one half of the program of study has been completed. Refunds should be paid within 45 days of the date of withdrawal from the school.

Audited Financial Statements

Regulators can learn a significant amount of information about an institution from professionally prepared financial statements (assuming the agency has personnel with the skill to analyze these statements, as noted above). Financial statements can tell the state important facts about the school's reliance on federal student aid, its expenditures on instruction and training versus staff and administration, and a host of other matters. These findings can be valuable pieces of knowledge for the state to utilize in deciding whether to investigate a school or take other action that may affect its licensure. New York and other states currently require schools to submit audited financial statements.

States should require each school to submit a certified financial statement or other appropriate financial compilation every year as a condition of relicensure. The failure to submit a statement should be grounds for immediate disciplinary action. The statement should meet nationally recognized audit standards and should be conducted by a third party.

Surety Bonding

Most states currently require schools to supply the state with the original copy of a surety or performance bond in an amount specified by the state. In many states, this amount is fixed for all schools, regardless of school enrollment or the amount of prepaid tuition earned. States require surety bonds in order to protect students in the event of the sudden closure of a school.

The central concern raised about surety bonds has been their inadequacy. In many states, schools are required to post bonds in the $10,000 to $25,000 range. Given that many proprietary school programs cost from $5,000 to $10,000 or more, bonds can easily be expended on just a handful of students, leaving the remainder financially uncompensated.

Some states, such as Illinois, now require schools to post a bond equal to the amount of the greatest unearned prepaid tuition that the school will have at any one time.[34] Other states are forgoing surety bonds altogether in favor of tuition protection funds (see below). While both of these provisions are generally appropriate, there are reasons why, separately, surety bonding and tuition protection funds may not be sufficient protection for students.

One stated advantage of the surety bond approach is that, in some instances, it subjects schools to an independent review of their finances. Surety companies tend to shy away from schools with poor credit records or which are perceived in other ways to be a risky financial investment. This can be a strong indicator to the state of more serious financial difficulties worthy of further investigation. On the other hand, the largely unregulated surety market is no replacement for direct state oversight. Given the difficulty of obtaining surety bonds for any business enterprise during difficult economic times, it may be unfair to require schools to post large bonds.[35]

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[34] This applies to schools regulated by the State Board of Education in Illinois. Schools are required to provide this projection at the time of initial application and are required to report the actual amount for the previous fiscal year at relicensure.

The solution to this dilemma may be to require schools to post surety bonds and participate in a tuition protection fund. The tuition protection fund can serve as the primary vehicle for repaying students who are financially harmed by the sudden closure of a school. The surety bond, meanwhile, can be used for the purpose of serving as a backup for the tuition protection fund in the event of major hemorrhaging of the system due to a rash of sudden closures.[36] Further, the bond could also be used to aid the state in collecting fines and fees from schools that suddenly close after being penalized by the licensing agency.

Tuition Protection Funds

One of the new developments in state licensing over the past few years has been tuition protection or reimbursement funds (Connecticut actually was a pioneer in this area, having established a tuition protection fund in 1977). Other states, including California and Texas, have recently established these funds while removing the surety bonding requirements (for an example of the provisions governing a tuition protection fund, see Appendix).

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[35] Problems may also arise for the state if the school does not pay the premiums on a bond. Few states have the mechanism in place to ensure that premiums are up to date; a school experiencing financial difficulties could end up losing the bond and then close soon after, leaving the state with few avenues for redress.

[36] Recent national experience with government insurance programs, especially the Federal Savings and Loan Insurance Corporation, indicates that a backup system may be a wise approach.

Tuition protection funds are usually established by legislation and are managed and invested by the state treasurer. Each school must contribute to the fund based on a per student assessment. In most states, the fund is capitalized until it reaches a maximum, at which point all schools (except new schools, which must contribute to the fund for a specified period of time) cease contributing to the fund. If the fund is drawn down because of a school closure, all institutions must begin contributing again until the fund is recapitalized.

Many state proprietary associations are beginning to support the establishment of tuition protection funds, in part because they help to limit adverse publicity caused by the sudden closure of schools. Likewise, many states are adopting them because of the perceived inadequacy of surety bonding. In general, tuition protection funds provide a convenient, readily accessible vehicle through which students can be compensated.

We recommend that each state establish a tuition protection fund and require all schools to contribute to such a fund as a condition of licensure or relicensure. The fund should be capitalized through an assessment levied on institutions. One way to capitalize the fund would be to set an assessment based on the headcount enrollment of students attending the school in the previous calendar year.[37] Another way would be to do as California does, which is to base the assessment on the tuition charged to each student (California charges schools . 1 percent of the tuition for each student). The method of assessment should be based on the speed with which the fund needs to be capitalized, and the equity of the fee on students.[38] Any penalties or fines paid to the state by institutions should also be deposited in the fund.

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[37] Individual states would have to set the actual assessment amount based on the total enrollment of proprietary schools in the state and the track record of sudden closures in that state. For example, if the total annual enrollment in a state is 50,000 students, an assessment rate of ten dollars per student would yield a fund capitalized at $500,000 after the first year.

Teach Outs

Some students who are attending schools which suddenly close have already made a substantial investment of time and energy in their training. For these students, financial protection is secondary to concerns about obtaining the certificate or credential. Some states have established teach out plans on an ad-hoc basis, dealing specifically with the individuals harmed by a suddenly closed school. Students are placed in nearby schools offering a similar program of study. In many cases, these teach outs are engineered with the cooperation of the state proprietary association.

One problem with this approach is that it comes after the school has closed and can be a lengthy and time consuming process for both the state licensing agency and the students. States such as New York have attempted to address this issue by requiring so-called "teach out plans" from all licensed schools. Schools must submit a plan to the state which outline the teach out arrangement they have with other schools, including a description of the comparability of curriculum, remedial instruction, and other matters.

Schools should be required to submit teach out plans as a condition of initial licensure and should update these plans as necessary. Schools which are geographically remote or which offer unique programs not readily taught at another school should be closely monitored by the state to ensure that they are up to date regarding surety bonding or tuition reimbursement fund payments.

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[38] Since schools almost surely will pass the cost directly on to students.

Schools should also be required to maintain records for several years regarding students, institutional finances, and other issues. This is especially important for schools which close. Provisions should be made to ensure that records are safely kept and transported when the school closes, preferably into the custody of the state or at another institution with common ownership. See the Appendix for New York's record maintenance regulations, particularly as they relate to this issue of contingency in the event of school closure.

Site Visits

Surprisingly, many of the states participating in this study do not perform regular site visits. In fact, some states require site visits only as a condition of initial licensure. Schools may never see state employees again provided that no complaints are lodged against the school.[39] Most states cited inadequate staff as the primary reason why site visits were not conducted on a set schedule.

Site visits represent the best way that states have to better understand what schools do and thereby protect the consumers of proprietary education. An inspection of facilities, books, teaching aids, current lesson plans, and school files and records are all important components of a site visit. Schools with proper teaching, administrative, and financial procedures should have few problems with the site inspection process.

Ideally, all schools should be visited annually by a representative of the state licensing agency. Schools which are found to have a high number of complaints lodged against them, or which have been the subject of disciplinary action in the previous year, should be visited more than once in a year. And every two years, the state should attempt to pay an unannounced visit to schools to ensure continuing compliance.

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[39] Health inspections and other safety-oriented visits are sometimes performed on a regular basis in these states. However, inspections of student records, lesson plans, or other materials are not performed.

Licensing Exemptions and Exceptions

One of the legacies of the ECS model legislation is that many states decided to exempt certain categories of institution from the process of state licensing. The most important of these exemptions was for accredited institutions. The rationale was that the procedures of private accreditation were equal to or exceeded those of the state. State licensing was seen to be a repetitive, and unnecessary, procedure.

As time has passed since the ECS model was proposed, many states have moved away from the granting of exemptions for accredited institutions (although some continue to grant exemptions for regionally accredited schools). Others have implemented exemptions for other categories of schools, including schools that provide religious training, degree granting institutions, schools that are branch campuses of larger institutions, and schools that are only open for short periods of time on a seasonal basis.

There is no substitute for, nor should there be any rationale supporting the exemption from, direct state oversight and regulation of proprietary schools. The growth of abuse in the student aid programs has demonstrated that accreditation is an insufficient form of oversight, even for those schools that are accredited by religious or regional accrediting organizations. Likewise, states should not cede their responsibility to protect consumers by granting exemptions based on the standards of a private, voluntary organization. Because accrediting organizations generally visit schools at intervals of three to five years, and because many do not thoroughly examine the critical financial aspects of schools, the exemption of accredited schools from licensure is unwise. Institutions should be required to meet the state proscribed standards regardless of other credentials or criteria.

States can end the practice of exempting accredited institutions while still "building upon" the valuable work of accreditation reviews. Informal communication among licensing and accredtation staff, joint visits, and the development of greater consensus among states and accrediting bodies as to what constitutes "good practice" will aid in this area.

States should not exempt branch campuses for the purposes of licensure. Many of the state regulators interviewed for this study cited branch campuses as a central cause of worry in recent years, in part because of concern about the possibility that larger parent organizations might attempt to substantially avoid state oversight. Regardless of the ownership or corporate structure of a school, each geographically independent site should be separately licensed and regulated by the state. Branch campuses should meet all of the standards set by the state.

The exemption of schools classified as "religious" should also be curtailed. Some states have experienced cases where schools with a religious affiliation have been exempted from licensing, only to discover that the school has been using this exemption to offer training in non-religious programs, such as truck driving. Only schools whose sole purpose is religious or theological training, and which are accredited by an organization recognized by the U.S. Secretary of Education, should be exempt from state licensing.

Exemptions from state licensing should only be granted for programs which are avocational in nature, for programs which are conducted in-house by corporations for the purposes of training their employees, and for other, legitimate reasons clearly outside the purview of direct state approval. (See Appendix for an example of possible licensing exemption categories, taken from Alaska's regulations.)

Addressing Consumer Complaints

One of the most important ways in which state licensing agencies gather information about potentially abusive institutions is through complaints lodged by prospective, current, or former students. Consumer complaints may include such matters as late or unpaid tuition refunds, inadequate facilities or equipment, absent or poorly trained faculty, and others. Unfortunately, few states have vehicles in place which systematically track these complaints or work toward their resolution. In many states, consumer complaints are acted on only on a case-by-case basis. This may result in the failure to detect long-term or repeated problems associated with a particular institution.

States that do have requirements governing action on student complaints usually focus on the process of complaint filing and resolution. For example, Alaska requires all complaints filed by students to be investigated. The licensing agency is required to attempt to reach a settlement between the complainant and the institution. If a resolution to the problem is not achieved, a hearing on the complaint is scheduled. A full range of awards and penalties ranging from full or partial restitution for the damage or loss to revocation of the institution's authorization to operate, are authorized against those institutions found to be in violation of state law or regulations.

States should establish procedures for receiving and responding to consumer complaints. One way this could be done is through the establishment of a system of conflict resolution and arbitration.[40] Such a system would allow for the orderly receipt of complaints, prompt action on them by the state, and disposition or resolution of the alleged problem. These procedures would serve not only to protect consumers from potential abuse, but would also ensure that ethical schools are protected again scurrilous charges from students intending to manipulate the system for monetary gain.

States should also maintain and update records about the frequency and nature of complaints filed against specific institutions. These records should then be considered as a part of the process of relicensure.

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[40] For a thorough discussion of the many benefits of such a system, see Jerry W. Miller, "Time for a New Approach to Licensure and Regulation of Proprietary Schools," April 1991 (available from the SHEEO office).

V. EDUCATION STANDARDS

Part of the consumer protection function of the states is to ensure that the programs of study offered by proprietary schools are appropriate for the students being taught. The state also has a responsibility to determine if the curriculum being offered by a school is adequate for the subject matter being taught and is geared toward meeting the requirements of the labor market and employers. Further, states have an interest in ensuring that students who enroll in programs at proprietary schools eventually benefit from that training. Each of these areas broadly define the state role and responsibility for setting and maintaining minimum education standards.

One issue that has been debated frequently over the past two decades concerns the state role in establishing and upholding standards vis a vis the process of private accreditation. Simply put, do the two perform similar functions? The answer, as is clear from this report, is that there are many areas where state licensing and private accreditation converge. However, the existence of standards which are a condition of accreditation and are also similar to requirements for state licensing should not substitute for state oversight. As noted previously in the discussion of licensing exemptions, the state should not cede its responsibility to protect consumers simply because some of the steps in licensing are similar to those in accreditation.

States have two general reasons for setting and maintaining standards of educational quality, independent of the private accreditation process. First, states must protect the rights of students, from the enrollment stages through graduation and entry into the job market. This responsibility is the primary function of the states in the licensing process. However, states also have a second reason for overseeing education standards: the investment of governmental and taxpayer dollars in such schools. If funds flow from the government to schools (either directly or through students), the government should have a say in how that money is utilized. The governmental assumption that the student is receiving an appropriate education for the sum it is investing in that student[41] needs to be backed up by some assurances. These assurances can come in the form of guidelines and procedures governing standards of educational quality.

It is important to note that state licensing should not be used as a proxy for accreditation, just as accreditation should not serve as a substitute for licensing. In designing licensing standards governing educational quality, states should build on the standards of accreditation. By doing so, states will benefit from the experience of accrediting organizations and therefore assure a high standard of quality educational services for their citizens.

This chapter provides an overview of the topics that state licensing agencies need to examine in setting and maintaining education standards. The state role in influencing the admission of students, the proper education of these students, and the eventual outcomes of that education are explored.

Pre-Enrollment Standards

The preparation of students is an important factor in determining the prospects for success in a program of study. Academic preparation, together with enrollment in a program of study appropriate to the interests and skills of a student, can be an important factor in determining successful completion of a program and employment in the occupational field.

It is therefore important that students demonstrate an ability to benefit from the training offered by an institution. Regrettably, this term "ability to benefit" has been distorted somewhat by its use in federal student aid programs. In that context, it is used to describe students who are admitted to postsecondary programs without a high school diploma or equivalent. The lack of clearly defined standards for admitting "ability to benefit" students has been a topic of considerable debate in the student aid programs, including a recent attempt to refine the definition of acceptable assessment tools and scoring methods.[42]

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[41] In the form of student aid, job training money, or other support.

However, in the context of state licensing, ability to benefit frequently has broader connotations than is the case with the student aid definition. By ability to benefit, we mean that all students should be able to demonstrate that the specific program in which they are enrolled (or about to enroll) is appropriate for their level of proficiency and skill. An accurate assessment of students' skills, and their likelihood of succeeding in a specific program of study, can be a powerful tool for students to use in making an informed enrollment decision. Ability to benefit should ultimately be a concept that serves the needs of, and provides the benefits to, students, rather than the institutions in which they intend to enroll.

Students can demonstrate this ability to benefit through the use of a diagnostic skills test.[43] Assuming adequate funding is available, the test could be administered to all prospective students as a means of gauging their skills and qualifications. The test could be devised by the state and administered at a neutral site; or, alternatively, the state could designate examinations to be used by institutions as a basic skills test. In either case, the test should be one that is specifically relevant to vocational learning.

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[42] This is described in a notice published in the Federal Register on December 19, 1990. The notice includes a list of approved ability to benefit examinations and the standards for establishing passing scores on such examinations. As of this writing, the notice has not been implemented due to court injunctions sought (independently) by the California Community Colleges and a testing company.

[43] The notion of a skills test is not unfamiliar to those in traditional higher education. These kinds of tests for proprietary students have been proposed previously, most recently when the New York State Education Department staff suggested the use of independent admissions assessment for the proprietary sector in 1989. See New York State Education Department, "A Comprehensive Policy for Approaching Proprietary School Issues," March 6, 1989 (unpublished).

Once the student has taken the examination, the state (or other neutral party) should score the test and send a report of its results to the student. The report should summarize the student's strengths and weaknesses and recommend possible programs of interest — and perhaps even the names of licensed schools — or remediation. The report should also include a report of current and future labor market needs prepared by the U.S. Department of Labor or the state. Students should be required to sign a form which acknowledges that they have received the report. A copy of this report should then be submitted to the school of his or her choice, along with the signed enrollment agreement.

Remediation — whether required or simply recommended by the state — should be offered to all students at the time when test scores are sent. This remediation should be provided by the state, schools, or a designated third party (such as an adult education center) at low cost to the student. Students desiring or required to seek remediation should be informed about the availability of such programs at local adult education centers, high schools, or other locations. If a proprietary school offers a remediation program, it should be similar in cost, content, and design to those offered by public agencies.

It is evident that a required basic skills test may have an adverse effect on students who enroll in proprietary programs because of their rolling admissions. However, it is equally clear that these needs are superseded by the need to ensure that an informed enrollment decision is being made. A modest delay in entry time may be a small price to pay for long-term employment and earnings potential.

It is also reasonable to assume that a skills test could harm the recruiting programs of some schools. However, the schools that would be primarily affected by these provisions are those which have indiscriminate standards of admission. For schools with good programs of study, the only effect of this approach will be that qualified students recruited will be delayed from entering the school for several weeks. Given that the entry into traditional higher education is also often predicated on the taking of an examination (either the SAT, ACT, or other aptitude assessment), we do not believe this requirement is unreasonable.

Currently, no state requires this method of assessment for prospective proprietary students. However, there are precedents for government-required assessments for job training programs. For example, the Family Support Act of 1988 requires welfare recipients to undergo assessments that will lead to the development of an employability development plan. This plan is used to coordinate the counseling, referrals, and information provided to participants.

One clear drawback of the skills test approach is that the state investment of time and resources is unclear. Depending on the frequency of test administration, the need for revisions to the test on a regular basis, and the number of sites at which the test is administered, this proposition is obviously not without cost. Further, this approach may also suffer from complexity: the steps students need to go through are clearly more detailed than with the current system. These shortcomings will have to be evaluated and debated in each state.

Another important step states should take during the pre-enrollment process would be to encourage students to receive independent job/career counseling prior to enrollment in a proprietary institution. One way to do this is to suggest that students attend a counseling session at an adult education center (or other approved site) during the period between the signing of the enrollment agreement and the first day of classes.

Curriculum and Program Standards

States should examine the curriculum and course content of programs offered by licensed schools.[44] This examination should complement, but not substitute for, the important process of self-study and improvement offered through accreditation.

States may examine three broad areas in evaluating the curriculum: the objectives of the program, the methodology used to meet the objectives (the courses and teaching methods), and the expected outcomes for students (including ways used to assess these outcomes).

The curriculum for each program or credential offered by a school should be approved by the state prior to the start of classes in that program. Any substantial deviations from the approved curriculum, or changes in equipment or teaching facilities, should be approved in advance.

In order to evaluate the three main areas of curriculum identified above, each state should require schools to submit several pieces of information. While not inclusive, the following list suggests the kind and range of information that might be required:

- the student-teacher ratio for the program and/or individual courses
- the minimum requirements for entrance into the program, including entrance examinations and the expected score on that examination

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[44] The issue of setting curriculum and program standards in order to produce a more prepared workforce has been a frequent topic of recent educational policy reports. For example, the report of the Commission on the Skills of the American Workforce recommends that all students meet a national standard of educational excellence by the age of 16. Students would be required to pass a series of performance-based exams, designed with the help of employers and others, in order to achieve a Certificate of Initial Mastery. The certificate would qualify the student for entry into the workforce, college, or other advanced training. The performance-based exams would be designed so that students could explicitly prepare for them, rather than being used as a sorting mechanism. Student preparation for the taking of these exams would be guided by curriculum and program standards set by state employment and training councils.

- a list of all courses in the program, their objectives, and the central means of achieving that objective (hands-on training, the study of a certain chapter in a textbook, teacher demonstrations)
- a breakdown of the number of instructional hours devoted to the various components of the program
- school policies regarding academic probation, suspension, and the means of determining satisfactory academic progress
- the method of grading used and the standards needed to graduate from the program.[45]

In terms of the course content, California's new regulations[46] provide a model for other states to examine. California requires schools to have a complete syllabus on hand for each course in the program. The syllabus must include the following elements:

- short descriptive title
- statement of aims and list of educational objectives for this particular course
- designation of the relative level of sophistication of this course or component
- length of the course or sequence, and frequency of lessons or class meetings
- textbook and/or other required material
- sequential outline of subject matter to be addressed, which consists of more than a topical outline from the textbook to be employed, or a list of competencies to be learned and how these competencies are to be measured
- instructional mode or methods
- bibliography, specific to subject matter, for further inquiry and learning
- proportion of program which can be satisfied/fulfilled by satisfactory completion of this course

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[45] New York regulations specify that a student must achieve a cumulative average of 2.0 in order to graduate from a program at a proprietary school.

[46] These regulations are currently designated as "temporary," meaning that the new Council for Private Postsecondary and Vocational Education may decide to modify them at a later date.

- instructor currently assigned to teach/oversee course.

Because of the limitations of time, related experience, and manpower on the part of state agency staffs, outside consultant or experts may be used in the curriculum review process. These consultants could be assembled as peer review teams, or work independently, and should be composed of employers, educators, and other subject area specialists.

Outcomes

The outcomes of a proprietary institution program are arguably the most important parts of the educational function of the school. Schools which perform well according to various measures of performance can be said to be meeting their main objective as educational institutions.

Many states have only recently begun to collect information on the outcomes of proprietary education. Data regarding student retention, graduation, and job placement in the field of study have not been regularly collected in the majority of states participating in this study. In fact, many still do not collect basic information on enrollments, institutional revenues, or outcomes. This has inhibited attempts in most states to link institutional outcomes to the licensure of the school.

One problem with holding institutions to standards of performance is that uniform definitions of outcomes have been difficult to come by. While state higher education boards have the most extensive experience in this area, neither state licensing agencies nor the federal government have paid much attention to the issue until recently.[47] Now, with interest in accountability and outcomes assessment rising, the need for uniform definitions of proprietary school outcomes is growing. This would benefit not only individual states interested in improving the performance of institutions, but also the nation on the whole, which would benefit considerably by a national snapshot of proprietary school effectiveness.

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[47] The U.S. Department of Education is taking preliminary steps toward the goal of reaching some consensus on defining outcomes of proprietary education through a study entitled "Consumer Rights Information in Postsecondary Education." The contractor has already

States should begin to work cooperatively on defining acceptable measures of outcomes for proprietary school programs. A national task force under the auspices of the U. S. Department of Education should be convened to explore current outcomes measures in the states and address the need for uniformity.[48] The task force should be composed of representatives of state higher education coordinating or governing boards, persons directly responsible for the licensure or private career schools, proprietary school representatives, employers, labor market economists, and other national experts. As a first step, the task force should consider ways to define the following types of outcomes measures:

- retention rates in the program of study
- completion rates in the program of study
- skills developed as a result of the program
- earnings differential between program entry and job placement
- rates of job placement in the field of study
- employer satisfaction with the program graduate

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conducted a survey of states in order to determine how - or if - outcomes are currently defined in both the public and proprietary sector. The study may be completed in 1991. Also, the Student Right to Know Act, passed in 1990, requires the Secretary of Education to study the feasibility of making information available to all students regarding graduation rates by field of study, job placement rates, and passing rates on licensure or certification exams.

[48] This could be incorporated into the work of the SHEEO/NCES Communication Network contract funded by the U.S. Department of Education, which is charged with improving the quality and timeliness of higher education data. In response to the requirements of the federal Student Right-to-Know Act, the contract has examined the methods for tracking and reporting student retention and graduation rates.

- student satisfaction with the program following graduation
- rates of articulation into other forms of education
- rates of certification or licensing in the field of study
- minority and disadvantaged student participation and success.

Once national standards governing outcomes measurement are established, states should begin to link school licensing to their performance on any of the measures outlined above. Schools which fail to meet a standard set by the state should be suspended from operating the school for a specified period of time unless they can demonstrate performance improvements. State standards should take into account the previous history of performance measures at that school, the field of study, and the population being served by the institution. As an interim step, all states should begin to require the reporting of audited outcomes measures as a condition of relicensure. The definitions for outcomes during this interim phase should be based on state higher education experience with these measures.

Promoting Informed Choice

One of the most effective ways in which states can improve the education standards in private career schools is through policies that promote informed choice among students. Information on costs, length of program, retention rates, and the success of graduates in the job market, if widely disseminated, may steer students away from ineffective programs and toward effective ones. In addition, states should expand their efforts to inform prospective students of their financial aid options and their academic and financial responsibilities to repay loans.

Such efforts will depend greatly on the quality of data available on proprietary institutions, which in many states is woefully inadequate. It will also depend on the integrity of the data and its availability. In a paper developed in response to this study, Jerry Miller, a member of the project advisory committee, suggests a set of "essential data elements" that be provided to the public through the vehicle of credible audits (conducted, for example, by public accounting firms). Armed with relevant, verified data, students would then enhance the power and discipline of the market place.[49]

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[49] Among the data elements suggested by Miller are the following: qualifications of entering students; completion rates by field of study; placement rates of graduates; average beginning salaries; and numbers of complaints lodged against the institution and number resolved in favor of institutions and/or students. See Jerry W. Miller, "Time for a New Approach to Licensure and Regulation of Proprietary Schools," April 1991 (available from the SHEEO office).

VI. CONCLUSION

State licensing of proprietary institutions is a topic of considerable consequence to the statewide systems of postsecondary education. Though proprietary schools are often not seen as an important — or sometimes even extant — part of this system, the number of students seeking training at these schools and the significant governmental resources invested in aiding those students suggests otherwise. The relative lack of interest in the proprietary sector by much of the rest of postsecondary education may be a contributing factor to the current situation of limited oversight and regulation by the states. The dearth of adequate oversight and regulation has had a deleterious effect on many parties, including students whose consumer rights are not protected, states whose financial interest and responsibility for education are not being upheld, the federal government and its significant investment in proprietary students through student aid programs, employers who must retrain inadequately schooled employees, and the many outstanding and well-managed schools whose reputations are being tarnished by the transgressions of others.

But state oversight of the proprietary sector is beginning to change. This can be seen in the recent state reports concerning licensing of proprietary institutions, the rekindled interest in state licensing at the federal level, and the movement toward legislative and regulatory reform in many states. As more students attend these schools annually, and as more funds are invested in those students through student aid and job training, concern about lax standards and practices governing licensing will continue to grow. This concern will emanate from students who have been harmed because of inadequate standards, from state licensing agencies which are constrained by the current set of laws and regulations, from the federal government, and others.[50]

SHEEO has undertaken this study in part to get a better sense of the current state of proprietary school oversight and regulation. The purpose of the study has been to seek ways to improve state oversight of the proprietary sector in order to better protect both student and governmental investment in these schools. The multi-state study approach has helped to define the current diversity of practices concerning state licensing and to offer recommendations that can help guide state laws and regulations on a national basis.

The study has helped to formulate several principles upon which strengthened state licensing should be based. These principles provide the context for reform of proprietary school licensing. They are:

- A license to operate a postsecondary institution must be conditioned on a reasonable expectation of business viability and success.
- In the event of the business failure or sudden closure of a school, students must be financially protected and given the opportunity to complete their program of study.
- The state role in oversight and regulation involves assuring both consumer protection and educational quality.
- State financial support for existing or strengthened licensing standards must be adequate to ensure proper enforcement.
- Standards governing institutional licensing must be fair and equally applied, particularly with respect to credentials with similar titles.

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[50] In a SHEEO-commissioned paper on institutional eligibility requirements for federal programs, the author suggests that one possible outcome of the upcoming deliberations on the reauthorization of the Higher Education Act may be the imposition of some set of licensing standards on the states by the federal government. This could come in the form of the designation of a single agency responsible to the federal government for licensure of schools which receive federal student aid funds. See Lawrence N. Gold, Ibid.

- Coordination and consolidation of state licensing should be implemented to the greatest extent possible.

In order to meet these objectives, each state must have in place a governance or organizational structure that is appropriate. Nearly every state has its own, particular model of governance. Still, several patterns have emerged in our examination of organizational structures and in the analysis of these models. By examining current organizational structures and exploring the advantages and disadvantages of these models, this study has attempted to provide new ideas and concepts to those states dissatisfied with the efficiency or effectiveness of their current governance structures.

One of the central recommendations of this study is that states need to do a better job of examining both the academic and business side of operations in proprietary schools. Most SHEEO agencies have responsibilities only for degree-granting proprietaries and emphasize academic oversight, while other state agencies with responsibilities for non-degree proprietaries tend to emphasize consumer protection and financial oversight. Both orientations are legitimate and both we believe would be strengthened by the recommendations offered in this report.

Keeping this necessary balance in mind, the level of regulation should fit the level of potential abuse, which in turn will dictate agency staffing needs. Furthermore, states differ significantly in the incidence of school closure, consumer fraud, and lax education standards. This fact suggests that each state should apply the recommendations of this report in ways that focus resources where the problems are greatest.

Rather than attempting to devise an "ideal" governance model — which would likely result in delay of reform implementation in many states — this study instead has constructed five basic models of good governance. These models each have their own strengths and weaknesses that must be carefully weighed, though broad experience with postsecondary quality issues is a decided advantage. The models of governance are:

- The Consolidation Model, where all licensing and oversight authority is vested in a single, existing agency with prior postsecondary experience
- The Licensure Board Model, where licensing/oversight authority rests with an independent board consisting of political and state agency appointees
- The Coordination Model, where the current set of agencies with licensing or oversight responsibility consciously work more closely to coordinate activities and avoid duplication or inconsistency
- The Dual Licensing Model, where all schools are subject to separate institutional licensing and programmatic approval
- The Student Aid Agency Model, where the consolidation of all oversight and regulatory functions, including loan guaranteeing and state grant awarding, originate with the same agency.

Regardless of the model of governance assumed, this study has found that state licensing practices and procedures need reform. This reform must come in many forms, including staffing, the methods of paying for oversight, the inclusion of proprietary schools in the oversight process, and the many broad provisions concerned with consumer protection and education standards, such as advertising, institutional finances, and admissions standards.

One of the most pressing issues highlighted in this study concerns licensing agency staffing. Most of the states participating in the study exhibited inadequate numbers of staff needed for enforcement of existing laws and regulations. As a general rule of thumb, a minimum of one staff FTE for every 25 schools being licensed appears to be needed to support an organization which licenses schools on an annual basis. Some states will require more, depending on the number of school to be regulated. More important than the numbers of staff needed for adequate enforcement is the types of staff needed. In addition to a chief executive and appropriate levels of support staff, agencies should also hire investigative/field staff, accounting or financial specialists, education and training experts, and in-house legal staff.

Paying for the oversight of the proprietary sector is also an important issue. State financial support for licensing functions must be adequate to ensure that existing or strengthened laws and regulations are properly enforced. Simply adding new levels of regulation without providing the resources to support their enforcement is regressive and may ultimately do more harm than good. Both student and taxpayer interests cannot be served without an appropriate amount of funds to pay for oversight activities.

There are currently two general ways in which licensing agencies pay for their oversight activities: direct state appropriations, and fees. While the decision whether to rely primarily on state appropriations or fees is state-specific, in most cases some combination of the two is probably appropriate. However, if generating significantly more funds is the goal, fees have a distinct advantage because they can frequently be modified through regulatory or administrative means to meet agency needs.

Several fee-based approaches have been devised by the states to help pay for licensing functions. They include:

- flat fees, which are charged uniformly to all institutions, as well as to teachers, recruiters, and others employed by schools
- enrollment-based fees, which apply a level of sensitivity into the fee structure by assuming that schools with higher enrollments are generally more of a regulatory burden
- institutional revenue-based fees, which is perceived to be the most equitable of the fee structures because the fee is based on the gross tuition revenues of the school — an indicator of the school's ability to pay for its own oversight
- hybrid fees, which marry flat fees with enrollment or revenue-based fees in order to provide some sensitivity while also setting caps on the fees that can be charged

- supplemental fees, which some states charge in order to cover unusual expenses incurred by the agency.

In most states, proprietary schools should play a limited direct role in the governance process, just as public higher education institutions usually play a limited direct role in the systems of statewide governance and coordination for traditional higher education. However, there are areas where constructive involvement of school owners could be an important benefit to the state. For example, maintaining relations with state proprietary school associations and establishing advisory commissions are ways in which states can obtain important inputs from schools. In general, however, schools should not be represented on direct oversight bodies because of the potential for perceived conflicts of interest.

As for the actual licensing process and monitoring of schools, there is considerable variation across states. To inject a first order level of uniformity, it is recommended that schools be licensed annually, with at least one site visit scheduled during this time. Joint site visits with other state agencies, guarantee agencies, and accrediting organizations should also be explored.

During the initial and annual relicensure processes, several consumer protection issues should be examined and regulated. They include:

- Advertising - Provisions should cover the use of advertising in newspaper classified advertising, unverified data on outcomes, promises of student aid receipt, and other topics.

- Schools Catalogs and Enrollment Agreements - Catalogs should contain official information on courses, facilities, equipment, verified data on student outcomes, policies governing tuition refunds, and other issues. Enrollment agreements should contain similar information plus a notice about cancellation provisions and sources of further information about the school or other vocational programs.

- Reviewing School Personnel Credentials - Owners, directors, teachers, and commissioned agents should all be subject to some approval by the state.

- Institutional Finances - The financial abilities and operations of proprietary schools should be closely regulated, including setting specific guidelines for pro-rata tuition refund policies, requiring audited financial statements, and requiring schools to post surety bonds and participate in a tuition reimbursement fund to protect students in cases of sudden school closure.

- Teach Outs - Schools should be required to submit teach out plans which describe arrangements for providing continuing training to students in the event of the sudden closure of the school.

- Site Visits - All schools should be visited annually by the state, and unannounced visits should be conducted every two years.

- Licensing Exemptions and Exceptions - Provisions exempting or in any way lessening the requirements of licensure for accredited schools or branch campuses should be abolished.

States also have broad responsibility for setting and maintaining minimum education standards in order to protect the consumers of proprietary education. The topics that state licensing agencies should examine in setting and maintaining standards include:

- Pre-Enrollment Standards - State resources permitting, students could be required to demonstrate an ability to benefit from the training offered by an institution. This could be accomplished through a diagnostic skills test that would be used by the state as an evaluative tool in order to help students assess their own skills, interests, and employment potential. All students should also be encouraged to receive job or career counseling prior to the start of classes.

- Curriculum and Program Standards - States should regulate, through the use of expert consultants, the curriculum and course content of schools in order to evaluate the objectives of the program, the teaching methodology, and the expected outcomes for student.

- Outcomes - Information on outcomes should be collected by every state using uniform standards established by a national task force, convened by the U.S. Department of Education using the existing SHEEO/NCES contract. The outcomes measures should eventually be used to link licensing to outcomes according to standards set by the states.

As a next step in this study, some of the recommendations contained in this report should be converted to legislative or regulatory language. This language can then be taken up by states in order to improve or strengthen those provisions which do not meet the standards outlined herein.

Still, on its own, this report may serve as a powerful tool for stimulating reform of proprietary school state licensing. The recommendations contained in this report represent a common set of standards and goals that each state should work toward in its licensing of proprietary institutions. Some states have already initiated reform efforts and may use this study to gauge their progress compared to national norms. Others have not begun to explore these issues in detail and may utilize this study to motivate interest among state agencies, legislators, and school owners.

In either case, the need for all states to be aware of, and participate in, the national discussion of reform of state laws and regulations is critical. One way to ensure that this discussion continues and does not end with the transmittal of this report is to continue the activities of the SHEEO Committee on Accreditation and Licensure related to state licensing. Ongoing work on this subject would help states to work through some of the more difficult substantive issues highlighted in this report. It would also provide a national forum for discussion of issues and efforts to coordinate reform.

Each state should also, if it has not already done so, establish a statewide task force (or other appropriate structure) on licensing issues. These state task forces should take the findings of this study in order to begin addressing ways to implement the recommendations. They should also maintain regular contact with SHEEO in order to provide progress reports and obtain advice on specific issues or concerns.

These and other means should be used to continue moving the agenda of state licensing reform forward. A process long overdue is now in urgent need of attention in many states which have failed to apply the necessary resources and commitment to state oversight of the proprietary sector. The important interests of students, states, and others will be served by this renewed commitment to reform.

VII. APPENDICES

A. Summary of Selected Questionnaire Results, By State

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F. Wisconsin Regulations Governing Tuition Refunds

G. California Law Governing The Student Tuition Recovery Fund

H. Alaska Regulations Governing Licensing Exemptions

I. New York Regulations Governing School Records

J. Selected Testimony Regarding Study Review Draft

- William Carson, Member, Board of Directors, National Association of Trade and Technical Schools and President, American Technical Institutes, Chicago, Illinois
- Sharon Thomas Parrott, Vice President of Governmental Relations for DeVry Inc.
- Dave Krogseng, Executive Director, Minnesota Association of Private Postsecondary Schools
- Shaila R. Aery, Secretary of Higher Education, Maryland Higher Education Commission
- Kathleen F. Kelly, Associate Director, Illinois Board of Higher Education

APPENDIX A

Summary of Selected Questionnaire Results, By State

SUMMARY OF SELECTED QUESTIONNAIRE RESULTS, BY STATE

	# of schools licensed by agency	1989-90 enrollment	frequency of licensure	site visits conducted for: licensure/ re-licensure	FTE professional staff	type and amount of fee
ALABAMA **Principle Degree Granting Authority:** Alabama State Department of Education	[see below]	[see below]	[see below]	[see below]	[see below]	[see below]
Principle Non-Degree Granting Authority: Alabama State Department of Education	275	data not available	annually	always/ usually	0.5	flat: $250 initial $100 renewal
ALASKA **Principle Degree Granting Authority:** Alaska Commission on Postsecondary Education	2	400 (estimate)	By statute: initial authorization -- up to 2 yrs; renewal license or authorization -- up to 5 yrs. (in practice: 1-2 yrs. initial; 2-3 yrs. renewal authorizations)	always/ always	1.5	flat: $100 initial $100 renewal
Principle Non-Degree Granting Authority: Alaska Commission on Postsecondary Education	59 authorized and an additional 7 with agent or recruiting approvals only	3700 (estimate)	[see above]	[see above]	[see above]	[see above]
COLORADO **Principle Degree Granting Authority:** Colorado Department of Higher Education Division of Private Occupational Schools	20 schools	12,000 degree (estimate)	every 3 yrs.	always/ always	4.0	flat: $1800 initial; $600 renewal
Principle Non-Degree Granting Authority: Colorado Department of Higher Education Division of Private Occupational Schools	130 proprietary schools; 40 cosmetology schools; 170 total	32,000 proprietary schools; 16,000 cosmetology schools (estimate)	[see above]	[see above]	[see above]	[see above]
DISTRICT OF COLUMBIA **Principle Degree Granting Authority:** Education Licensure Commission	1	1705	If accredited, they have permanent license subject to review every 5 years. If not accredited, renewal every 3-5 years.	always/ always	2	enrollment based: $25 to $500 range
Principle Non-Degree Granting Authority: Education Licensure Commission	39	6,034	annually	always/ usually	[see above]	[see above]

	# of schools licensed by agency	1989-90 enrollment	frequency of licensure	site visits conducted for: licensure/ re-licensure	FTE professional staff	type and amount of fee
HAWAII **Principle Degree Granting Authority:** None	N/A	N/A	N/A	N/A	N/A	N/A
Principle Non-Degree Granting Authority: Accreditation and Private School Licensing Department of Education	38	1,075	annually	seldom/ never	1	$50
ILLINOIS **Principle Degree Granting Authority:** Illinois Board of Higher Education	22	13,558	Reauthorization is not required. Periodic program reviews are conducted to determine if standards and conditions, upon which authorization was originally granted, have been maintained	always/ see "frequency of licensure" column. Site visits may be conducted at any time as part of the program review process or to investigate complaints.	1.5	no licensing fee
Principle Non-Degree Granting Authority: Nonpublic School Approval Section Illinois State Board of Education	271	N/A	annually	always/ always (schools are visited by staff members assigned at least twice annually)	8 + or - 1 Mgm't FTE (The Section Manager and Assistant are assigned three specific programs.)	flat: $500 initial $250 renewal
MICHIGAN **Principle Degree Granting Authority:** Higher Education Management Services Michigan Department of Education	None	N/A	N/A	N/A	N/A	N/A
Principle Non-Degree Granting Agency: Higher Education Management Services Michigan Department of Education	300	N/A	annually	always/ usually	2	flat: $200
MISSISSIPPI **Principle Degree Granting Authority:** State Department of Education Bureau of Special Services	2	4000	every 2 years	always/ always	1.0	flat: $100 initial $50 renewal
Principle Non-Degree Granting Authority: State Department of Education Bureau of Special Services	117	17,000 (in and out-of-state)	[see above]	[see above]	[see above]	[see above]

	# of schools licensed by agency	1989-90 enrollment	frequency of licensure	site visits conducted for: licensure/ re-licensure	FTE professional staff	type and amount of fee
MISSOURI						
Principle Degree Granting Authority: Coordinating Board for Higher Education	14	7,196	annually (7/1-6/30)	seldom/ seldom	0.50 1/2	hybrid: min $100 max $1,500 based on tuition and fee revenues
Principle Non-Degree Granting Authority: Coordinating Board for Higher Education	160	31,000	[see above]	[see above]	[see above]	[see above]
MONTANA						
Principle Degree Granting Authority: Commission of Higher Education	none	N/A	N/A	N/A	N/A	N/A
Principle Non-Degree Granting Authority: Consumer Affairs Unit Department of Commerce	33	do not have this information	each school must renew their license annually	seldom/ seldom	1 part time. This function is part of the Consumer Affairs unit which consists of 2 employees. Only about 10-15% of time is allocated for proprietary school work.	flat: $50 initial; $25 renewal.
NEW JERSEY						
Principle Degree Granting Authority: New Jersey Department of Higher Education	2	1821	maximum licensure period is 5 years	always/ always	There is an office devoted to licensing and program approval; no individual is assigned to proprietaries.	flat:
Principle Non-Degree Granting Authority: Department of Education Division of Vocational Education	156	50,000 (estimate)	annually	usually/ usually	4	
TEXAS						
Principle Degree Granting Authority: Texas Higher Education Coordinating Board	agency does not license or approve schools	32 Associate Degree Programs approved by Texas Education Agency -- data not available.	N/A	never/ never	0	0
Principle Non-Degree Granting Authority: Texas Education Agency	371 -- proprietary 236 -- commercial driving schools	unavailable currently	annually	always/ always	23	hybrid: min $825 max $1,725 based on tuition fees and revenues

	# of schools licensed by agency	1989-90 enrollment	frequency of licensure	site visits conducted for: licensure/ re-licensure	FTE professional staff	type and amount of fee
WISCONSIN **Principle Degree Granting Authority:** Education Approval Board	4 degree only (1 out-of-state); 9 degree/non-degree (6 out-of-state)	degree only: 343 in-state, 12,649 out-of-state (1989-90 data); degree/non-degree: 653/306 in-state, 1,265/4,818 out-of-state (1988-89 data)	annually	usually/ usually	2	hybrid: $300 min based on gross tuition and fees revenues
Principle Non-Degree Granting Authority: Education Approval Board	9 degree/non-degree (6 out-of-state); 73 non-degree only (17 out-of-state)	degree/non-degree: 653/306 in-state, 1,265/4,818 out-of-state (1988-89 data); non-degree only 10,684 in-state, 5,759 out-of-state (1988-89 data).	[see above]	[see above]	[see above]	[see above]

APPENDIX B

Questionnaires

PART C: QUESTIONS FOR AGENCIES PRIMARILY RESPONSIBLE FOR OVERSIGHT OF NON-DEGREE-GRANTING PROPRIETARY INSTITUTIONS

1. How many proprietary schools are licensed or approved by this agency? __________

   ____

2. Approximately how many students were enrolled in these institutions in the 1989-90 academic year? (If 1989-90 are data not available, provide most recent data.)

   ____

   ____

3. Which of the following terms are used by this agency?

   a. "Licensed" ____

   b. "Approved" ____

   c. Other (please specify) ____

4. Which of the following types of licensure or approval are required by this agency? (Check all that apply.)

   a. Institutional approval or licensure ____
   b. General programmatic approval or licensure ____
   c. Program specific approval or licensure ____

5. Which of the following categories of institutions are exempt from a full licensure review? (Please check all that apply.)

   a. accredited ____

   b. in-house training schools ____

   c. religious training schools ____

   d. grandfathered under previous licensing/approval provisions (or by date of legislation) ____

   e. public institutions ____

   f. not-for-profit private institutions ____

   g. other (please describe) ____

   ____

   ____

6. How often, or at what intervals, do proprietary schools licensed or approved by this agency need to be re-licensed or re-approved?

____

____

7. Does this agency conduct site visits in the licensure (approval) of proprietary schools? (Check one.)

a. Always ____	b. Usually ____	c. Occasionally ____
d. Seldom ____	e. Never ____	

8. Does this agency conduct site visits in the re-licensure (re-approval) of proprietary schools? (Check one.)

a. Always ____	b. Usually ____	c. Occasionally ____
d. Seldom ____	e. Never ____	

9. How many persons in this agency work on the licensing or approval of proprietary schools (in full time equivalent units)?

Professional ________________ Support ________________

10. What is the size of the agency's budget devoted to proprietary oversight?

____

11. What is the amount of the licensing fee levied on institutions? ________________

12. Does your agency

a. have regular contact with other state agencies in your state involved with licensing and approving proprietaries?	Yes ____	No ____
b. have regular contact with accrediting bodies for the institutions under its jurisdiction?	Yes ____	No ____
c. conduct joint reviews with accrediting bodies?	Yes ____	No ____
d. conduct joint reviews with other state agencies in your state (e.g., for institutions with both degree and non-degree programs)?	Yes ____	No ____
e. have regular contact with agencies in other states involved with licensing and approving institutions?	Yes ____	No ____

13. Below are a list of consumer protection provisions and standards for licensing that some state agencies include in legislation and/or agency rules. Please indicate with a check mark whether your state or agency has such provisions or policies, and whether you specify standards.

		Have a policy	Specify Standards
a.	tuition refund policies	____	____
b.	performance, security or surety bonding	____	____
c.	teach outs (sometimes called train outs)	____	____
d.	requirements for financial counseling of students	____	____
e.	standards for faculty qualifications	____	____
f.	policies on facilities	____	____
g.	policies on libraries	____	____
h.	self-insurance programs	____	____
i.	regulation of advertising by schools	____	____
j.	submission of certified financial statements	____	____
k.	regulation of contents in catalogs and other materials	____	____
l.	reporting of previous bankruptcies	____	____
m.	maintenance of student records	____	____
n.	background of administrative officers	____	____
o.	regulation of terms such as "degree," "colleges," "certificate"	____	____
p.	policies on admissions	____	____
q.	policies on probation, suspension	____	____

r. Other ____

____

14. Below is a list of data sometimes collected from public and independent colleges by state boards. Please indicate whether your agency collects this data and for what purpose.

	Data collected for licensure	Re-licensure	Other Purpose (please specify)
Enrollment	____	____	______________
Revenues	____	____	______________
Expenditures	____	____	______________
Student aid data	____	____	______________
Completions	____	____	______________
Job placement	____	____	______________
Other outcomes data	____	____	______________
Faculty qualifications	____	____	______________
Facilities data	____	____	______________
Library holdings	____	____	______________
Number of employees	____	____	______________
Program offerings	____	____	______________
Curricular/graduation requirements	____	____	______________
Other ___________	____	____	______________

15. Are the proprietary schools regulated by this agency eligible for state student financial aid programs? Other forms of state support? (Please describe.)

____

____

____

____

16. Describe the governance structure for this agency (e.g., number of appointees, appointed by whom, number of proprietary representatives, length of term, etc.)

17. What changes do you believe should be made in your state to improve the accountability and quality of the proprietary sector?

Please return this questionnaire, Parts A-D, by May 14 to Jamie P. Merisotis, c/o Chambers Associates, Incorporated, 1625 K Street, NW, Suite 200, Washington, D. C. 20006, (202) 857-0670.

THE METHODS AND EFFECTIVENESS OF STATE LICENSING OF PROPRIETARY INSTITUTIONS

GENERAL INTERVIEW QUESTIONS

[NOTE: All numbered questions are to be asked of all interviewees; Probe questions MAY be asked depending on response to main query.]

Governance Issues

1) What model(s) of state licensing/oversight do you think would work best in your state?

PROBE

--All licensing/oversight consolidated into one existing agency?
--All licensing/oversight consolidated into a new, separate agency?
--Some licensing/oversight consolidated into existing agencies, with better coordination among all?
--Licensing/oversight split into two distinct areas--institutional (general), and programmatic?
--All licensing/oversight consolidated into one existing agency, with loan guarantee functions also handled by this agency?
--Other models?

2) Does the regulatory and planning environment in your state support the constructive involvement of proprietary schools?

PROBE

--Can you suggest ways to strengthen or improve this relationship?
--Do you think that proprietary institutions play an important part in the overall state system that provides educational services?

3) Limited staff and staff resources were cited frequently in the survey portion of this study as significant barriers to effective regulation. Using either your current licensing/oversight structure or one of the models mentioned earlier, what would be the ideal staffing of an effective licensing operation?

PROBE

--Approximately how many FTEs would be needed to run such an operation (professionals and support)?
--What kinds of people--in terms of skills and experience--would be needed?

4) What is the best way to finance licensing/oversight operations?

PROBE

--Direct state appropriations?
--A per student FTE formula?

--An institutional revenues formula?
--A flat fee schedule for licensing and renewals?
--Other ways?

5) Should licensing exemptions, either full or partial, be allowed for certain types or categories of schools?

PROBE

--Regionally accredited schools?
--Nationally accredited schools?
--Branch campuses?
--Schools already licensed by another state agency?
--Other types of exemptions?

6) Should proprietary school owners or representatives be prohibited from serving on licensing or oversight boards?

PROBE

--If YES, what justifications could be made to support this position?
--Should the same prohibition apply to school owners or representatives being included on site visit teams?

7) How can the relationship between state licensing authorities, accrediting bodies, and the federal government, be improved?

PROBE

--Would regular joint site visits with accrediting agencies, guarantee agencies, or others be helpful to your licensing operation?
--In what other ways would cooperation with others be helpful?

Consumer Protection Issues

1) Are the student consumers of proprietary education in your state being adequately protected from fraud, abuse, and other consumer rights violations?

PROBE

--If NO, is this because of inadequate laws and regulations or because of poor enforcement of existing laws and regulations (or both)?
--If NO, have significant steps been taken (or attempted) to correct shortcomings?

2) In what ways could existing state requirements regarding student admissions be strengthened or improved?

PROBE

--Should "ability to benefit" standards be tightened, or discarded?
--Should assessments of a student's ability to benefit--a basic skills test--be offered for all prospective students?

--Should admissions/ability to benefit testing be conducted by an entity separate from the schools?
--Should admissions officers/commissioned agents be licensed and bonded?
--Should limitations be placed on persons serving as both admissions representatives and financial aid officers?
--Should independent job counseling for prospective students be offered or required?

3) In what ways could existing state requirements regarding institutional finances be strengthened or improved?

PROBE

--Would independent, CPA-type audits be desirable/useful?
--Should tuition refund policies be geared toward program completion, such as a pro-rata term based policy?
--Are existing surety bonding standards adequate?
--Would a tuition reimbursement (student protection) fund, contributed to by institutions based on FTE enrollments, be preferable to surety bonding?
--Are there other ways to improve/strengthen requirements regarding institutional finances?

4) Should performance standards--rates of completion, job placement, or other program outcomes--be used as a condition of programmatic/institutional approval?

PROBE

--How would this best be arranged administratively?
--Would this require a significant change to your current system of data reporting by institutions?

5) In earlier portions of this study, the need for greater enforcement of existing or proposed laws and regulations was frequently cited. In what ways do you think enforcement could be significantly improved in your state?

PROBE

--Should the investigative powers of state licensing authorities be expanded?
--Should legal reforms be enacted to quicken the pace at which punitive measures are taken?
--Where in state government should the authority for enforcement reside?
--Are there other ways to enhance the enforcement of laws and regulations?

6) What essential elements do you think should be contained in model state licensing/oversight legislation?

7) Are there any other comments or pieces of information that you would like to offer for this study?

APPENDIX C

List of Study Participants and Regional Hearing Witnesses

Study Participants

Dee Bednar
Texas Education Agency

Lutz Berkner
New Jersey Higher Education
Assistance Authority

Joseph Davis
Wisconsin Educational Approval Board

Stephen Dougherty
Georgia Higher Education
Assistance Corporation

Samuel Ferguson
Florida State Board of Independent
Postsecondary Voctional, Technical,
Trade and Business Schools

Norma Foreman Glasgow
Connecticut Department of Education

Jon Glau
Colorado Department of Education

Richard Griswold
New Jersey Board of Cosmetology
and Hairstyling

John Haworth
Illinois Board of Education

Moss Ikeda
Hawaii Department of Education

Robert Jacob
Missouri Coordinating Board for
Higher Education

Sherry Jaeger
Alaska Commission on Postsecondary Education

James Kadamus
New York Department of Education

Kathleen Kelly
Illinois Board of Higher Education

William Lannan
Montana Guaranteed Student
Loan Program

David A. Longanecker
Colorado Commission on Higher Education

Linda Low
Alaska Commission on Postsecondary Education

Joe Miller
Alabama Department of Education

Claudia Berry Miran
Wisconsin Educational Approval Board

William Napier
Ohio Board of Regents

Kenneth O'Brien
California Postsecondary Education Commission

William Proctor
Florida Postsecondary Education Commission

Sterling Provost
Utah Board of Regents

George Roberts
Tennessee Higher Education Commission

Ronald Root
Michigan Department of Education

Phillip Roush
Indiana Commission on Proprietary Eduation

Colleen Sathre
University of Hawaii

Douglas Somerville
DC Education Licensure Commission

John Stone
DC Education Licensure Commission

Tony Webster
Mississippi Department of Education

Jerry Wines
Montana Department of Commerce

Regional Hearing Witnesses

Austin, Texas, January 29, 1991

Dee Bednar, Director
Division of Proprietary Schools
and Veterans Education
Texas Education Agency

Dale F. Campbell, Assistant Commissioner
Texas Higher Education
Coordinating Board

Paul Ellis, President
Jacki Nell Executive Secretary School
Austin, Texas

Marvin Felder, President
Temple Junior College
Temple, Texas

James Flippin, Executive Director
Mississippi Guarantee Student Loan Agency

Stephen Friedheim, President
Executive Secretary School
Dallas, Texas

Dennis J. Keller
Chairman and Chief Executive Officer
DeVry Inc.
Evanston, Illinois

Chicago, Illinois, March 18, 1991

William C. Carson
American Technical Institutes
Chicago

Jerry Dill
DeVry Institute
Lombard, Illinois

Mary Jo Dixon, Director
Sawyer College, Inc.
Merrillville, Indiana

Richard Harvey, Executive Director
Patricia Stevens College
St. Louis, Missouri

Kathleen Kelly
Associate Director, Academic Affairs
Illinois Board of Higher Education

Phillip H. Roush, Commissioner
Indiana Commission on
Proprietary Education

Arthur Stunard, President
DeVry Institute
Chicago, Illinois

Denver, Colorado, April 9, 1991

Linda Beene, Director
Arkansas State Board of Private
Career Education

Mr. William Bottoms
Executive Director
Colorado Aero Tech

Mr. Rene R. Champagne, President
ITT Educational Services, Inc.
Indianapolis

Mr. Jon E. Glau, Director
Colorado Division of Private
Occupational Schools

Dave Krogseng, Director
Resource Center-NATTS/AICS
Minneapolis, Minnesota

Cheryl Murphy, President
Colorado Institute of Art

Mr. William Winger, President
Colorado Private School Association

Washington, D. C., May 14, 1991

Stephen J. Blair, President
National Association of Trade
and Technical Schools

James Foran, Vice President
Association of Independent Colleges
and Schools

Joseph P. Frey, Chief
New York Bureau of Proprietary
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James A. Kadamus
Assistant Commissioner for
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Robert B. Knutson
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Jerry W. Miller, Director
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Charles B. Saunders, Vice President
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APPENDIX D

Advisory Committee and Committee on Accreditation & Licensure

State Higher Education Executive Officers

Project on State Licensing

Advisory Committee

James A. Kadamus
Assistant Commissioner for
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Ann Kelley
Senior Administrator
Minnesota Higher Education
Coordinating Board

Kathleen Kelly
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and Special Projects
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Consultant

State Higher Education Executive Officers

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John Hutchinson
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Montana University System

Jerome B. Komisar
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University of Alaska System

David Longanecker
Executive Director
Colorado Commission on Higher Education

Charles McClain
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Donald J. Nolan
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Ismael Ramirez
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Puerto Rico Council on Higher Education

Arliss Roaden
Executive Director
Tennessee Higher Education Commission

Colleen Sathre
Director of Planning and Policy
University of Hawaii

Richard D. Wagner
Executive Director
Illinois Board of Higher Education

APPENDIX E

Texas Regulations Governing Advertising By Institutions

(i) any statement contained in the application for the program approval is untrue;

(ii) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which approval was issued;

(iii) advertising and/or representations made on behalf of the institution which are false, misleading, or deceptive, including those which use the word "Associate" to describe a degree other than those approved by the agency prior to September 1, 1989, or by the Texas Higher Education Coordinating Board; or

(iv) the institution has violated any applicable provision of the Texas Education Code or this chapter.

(J) An applicant whose program approval is denied or revoked shall have the right to appeal under Chapter 157 of this title (relating to Hearings and Appeals). If the applicant fails to furnish additional evidence or exercise the right of appeal within 15 days after receipt of notice that the application is unacceptable, the notice shall become final.

(7) Advertising.

(A) Printed bulletins or other promotional information must be specific with respect to training prerequisites for admission to the school's courses, the curricula, the content of courses, and graduation requirements.

(B) Schools holding a franchise to offer specialized courses or subjects not available to other schools shall not advertise such courses in such manner as to diminish the value and scope of courses offered by other schools that do not hold such a franchise. Such advertising of special subjects or courses offered under a franchise shall be limited to the subject or courses offered.

(C) Schools or representatives shall not use a photograph, cut, engraving, or illustration in bulletins, sales literature, or otherwise, in such a manner as to convey a false impression as to size, importance, or location of the school, equipment, and facilities associated with that school.

(D) Schools or representatives shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the writer and without any offer of financial compensation. Such material shall be kept on file and made a permanent record of the school. Such endorsements shall bear the actual name or professional name of student.

(E) Schools or representatives shall not make deceptive statements concerning other proprietary school activities in attempting to enroll students.

(F) Classified advertising seeking prospective students must appear under "instruction," "education," "training," or a similarly titled classification and shall not be published under any "help wanted" or "employment" classification.

(G) Every display-type newspaper advertisement, or other advertisement placed by the school or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(H) All advertisements placed by the school or its representatives seeking prospective students must include and clearly indicate the full and correct name of the school, its address, and the city where the school is located.

(I) No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the school has or knows of jobs or employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(J) No statement or representation shall be made that students will be guaranteed employment while enrolled in the school or that employment will be guaranteed for students after graduation, nor shall any school or representative thereof falsely represent opportunities for employment upon completion of any course of study.

(K) No dollar amount or amounts will be quoted in any advertisement as representative or indicative of the earning potential of graduates.

(L) No statement shall be made that the school or its courses of instruction have been accredited unless the accreditation is that of the appropriate nationally recognized accrediting agency listed by the United States Office of Education.

(M) No statement shall be made that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by the approving agency of the state or federal government. Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." An explanation of the transferability must be included in an appropriate place in all school catalogues.

Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised but any limitations shall be included in such advertisement.

(N) No proprietary school shall advertise as an employment agency under the same name or a confusingly similar name or at the same location of the school. No representative shall solicit students for a school through an employment agency.

(O) The director at any time may require that a school furnish proof to the director of any of its advertising claims. If proof acceptable to the director cannot be furnished, a retraction of such advertising claims published in the same manner as the claims themselves, must be published by the school and continuation of such advertising shall constitute cause for suspension or revocation of its certificate of approval.

(P) If student tuition loans are available at the school, the school may advertise them only with the language "student tuition loans available" in type no larger than that used for the name of the school. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.

(Q) Schools which are cited by the Division of Proprietary Schools and Veterans Education three or more times during any 12-month period for violating any of the provisions of this subsection shall maintain for one year from the date of the third citation a complete record of all advertising, sales, or enrollment materials (and copies of each) used by or on behalf of the institution during the 12-month period. If the director views the violations to be of sufficient gravity, the school may be required to maintain the record after the first or second violation. The materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature used by sales people, films, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media, leaflets, handbills, fliers, and any sales or recruitment manuals used to instruct sales personnel.

(R) Nothing in these guidelines shall prohibit release of information to students as required by a federal agency.

(8) Minimum progress and attendance standards.

(A) Progress. Appropriate standards must be implemented to ascertain the progress of the students enrolled. Progress standards must meet the following requirements:

APPENDIX F

Wisconsin Regulations Governing Tuition Refunds

Chapter EAB 7

REFUND STANDARDS

(s. 38.51 (7) (e), Stats.)

EAB 7.01 Philosophy and principles
EAB 7.02 Definitions
EAB 7.03 Full refund
EAB 7.04 No refund in courses of instruction which have fixed class schedules, are shorter than 6 class days and cost less than $150
EAB 7.05 Partial refund in courses of instruction which have fixed class schedules and which are shorter than 11 class days
EAB 7.06 Partial refund in courses of instruction which have fixed class schedules and which are longer than 10 class days
EAB 7.07 Partial refund in resident courses of instruction which are divided into 2 or more terms
EAB 7.08 Partial refund in courses of instruction without fixed class schedules
EAB 7.09 Partial refund in courses of instruction offered on a lesson-by-lesson basis
EAB 7.10 Partial refund in correspondence courses of instruction
EAB 7.11 Partial refund in combination courses of instruction
EAB 7.12 Notice of withdrawal
EAB 7.13 Refund not conditional on compliance with school regulations
EAB 7.14 Distribution of refunds to financial aid sponsors

EAB 7.01 Philosophy and principles. (1) It shall be the policy of the board to approve only those schools which publish and adhere to refund provisions which are designed to improve the educational quality of the school and are based upon sound educational, as well as economic, principles.

(2) The refund standards required by this rule are based upon these principles:

(a) The purchase of educational opportunity to learn through any course of instruction is different from any other kind of purchase because of the number of intangibles and unknowns involved in education. As a result, it is common that students make numerous "false starts" in their educational programs. These starts are to some degree minimized through good counseling. It is important, however, to preserve for the student the right to a change of mind (recognition of a false start) without too serious a penalty, since this action itself may be important in the student's growth, maturation and learning.

(b) It is the responsibility of the school, through pre-enrollment counseling, to make reasonable certain before enrollment is completed that the student has the ability to profit from the course of instruction under consideration. In making a determination regarding the student's ability to profit from a course of instruction, a school may apply criteria such as educational background, success as a high-school or post-high-school student, practical experience in a related activity, physical ability to engage in the type of employment for which the course of instruction is represented to prepare students, and results of a valid qualifying test.

(c) Since it is the responsibility of the school to select its students carefully, charges to the student upon cancellation or withdrawal before the course of instruction begins should be a smaller portion of the total cost of the course of instruction than upon withdrawal after partial completion.

(d) After the course of instruction is begun, the student's responsibility for progress increases with the passage of time and the completion of work. If it is fair to expect the school to select students carefully, it is fair (assuming competent instruction) to expect the individual student to bear increasing responsibility for progress. Furthermore, the school's investment in the student's learning increases as the student progresses, and fair and ethical refund standards should encourage the school to invest generously in the instruction of continuing students with adequate safeguard of that investment. Consequently, the refund standards of this rule permit an ever larger portion of the total cost of the course of instruction to be charged as the student progresses through the course of instruction.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.02 Definitions. The definitions in s. EAB 5.01 shall also apply to this chapter.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.03 Full refund. A school's refund policy shall provide for a full refund of all money paid by the student if:

(1) The student cancels the enrollment agreement or enrollment application within 3 business days under s. EAB 5.04;

(2) The student accepted was unqualified, and the school did not secure a disclaimer under s. EAB 6.04;

(3) The student's enrollment was procured as the result of any misrepresentations in the written materials used by the school or in oral representations made by or on behalf of the school.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 7.02 and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.04 No refund in courses of instruction which have fixed class schedules, are shorter than 6 class days and cost less than $150. If for any reason a student withdraws or is dismissed by the school from a course of instruction which has a fixed class schedule, is shorter than 6 class days, is less than $150 in total cost and is not one of a sequence of courses of instruction, the student is not entitled to any refund, except that the student is entitled to a full refund in the following instances:

(1) The student accepted was unqualified, and the school did not secure a disclaimer under s. EAB 6.04;

(2) The student's enrollment was procured as the result of any misrepresentations in the written materials used by the school or in oral representations made by or on behalf of the school.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.05 Partial refund in courses of instruction which have fixed class schedules and which are shorter than 11 class days. In courses of instruction which have fixed class schedules and are shorter than 11 class days, except for those courses of instruction described in s. EAB 7.04, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $650 or less, and may not exceed $100 if the total cost is greater than $650.

(2) If for any reason a student withdraws or is dismissed by the school after attending any class, but prior to completing 25% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $100 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after completing 25% of the course of instruction, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $400 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.06 Partial refund in courses of instruction which have fixed class schedules and which are longer than 10 class days. In courses of instruction which have fixed class schedules and which are longer than 10 class days, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $1000 or less, and may not exceed $150 if the total cost is greater than $1000.

(2) If for any reason a student withdraws or is dismissed by the school during or at the end of the first week of attendance, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after beginning the second week of attendance, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $500 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.07 Partial refund in resident courses of instruction which are divided into 2 or more terms. A school may elect to apply the following refund policy to all students who for any reason withdraw or are dismissed by the school from a resident course of instruction which is divided into 2 or more terms:

(1) The 3-business-day cancellation privilege shall apply to the first enrollment of the student in any of the courses of instruction of the school which are divided into 2 or more terms. A student enrolling in subsequent terms of the same course of instruction, or transferring from one course of instruction to another, shall not be entitled to another 3-business-day cancellation privilege.

(2) After expiration of the 3-business-day cancellation privilege, the school may retain a one-time application fee not exceeding $30.

(3) After expiration of the 3-business-day cancellation period, and prior to the end of the first week of classes in any term, the school may retain a registration fee not exceeding $20, plus an amount not exceeding 10% of the total cost of the term.

(4) After the end of the first week of classes in the current term, a student who for any reason withdraws or is dismissed by the school from the course of instruction prior to the end of the week shown in column A below shall be charged no more than a registration fee, not to exceed $20, for the current term, plus the percentage of the total cost of the term which is shown in column B below.

A	B
week 2	20%
week 3	40%
week 4	60%
week 5	80%
after week 5	100%

(5) No amount may be retained by the school for any terms beyond the current term, except that a registration fee not exceeding $20 may be retained for a subsequent term if for any reason a student who has registered for the next term withdraws or is dismissed by the school from the course of instruction during the last 4 weeks of the term.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.08 Partial refund in courses of instruction without fixed class schedules. In courses of instruction without fixed class schedules, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes or utilizing any instructional facilities, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $1000 or less, and may not exceed $150 if the total cost is greater than $1000.

(2) If for any reason a student withdraws or is dismissed by the school after attending any classes or utilizing any instructional facilities, but prior to having attended classes or utilized any instructional facilities on 6 separate days, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons completed, classes attended or hours attended by the student;

(b) The number of lessons completed, classes attended or hours attended by the student shall be divided by the number of lessons, classes or hours required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after having attended classes or utilized instructional facilities on 6 separate days, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $500 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

(5) A school may elect to use lessons, classes or hours in computing the pro rata portion of the total cost of the course of instruction. The election shall be made apparent in the school's statement of refund policy.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.09 Partial refund in courses of instruction offered on a lesson-by-lesson basis. In courses of instruction offered on a lesson-by-lesson basis, the school's refund policy may not permit any charge to a student which exceeds the exact charge for the number of lessons completed by the student, plus the retail cost of any books, supplies and equipment furnished to and retained by the student.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.10 Partial refund in correspondence courses of instruction. In correspondence courses of instruction, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to submitting the first lesson, the charge may not exceed 15% of the

total cost of the course of instruction if the total cost is $500 or less, and may not exceed $75 if the total cost is greater than $500.

(2) If for any reason a student withdraws or is dismissed by the school after submitting the first lesson, but prior to submitting 10% of the total number of lessons in the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons submitted by the student;

(b) The number of lessons submitted by the student shall be divided by the number of lessons required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after submitting 10% of the total number of lessons in the course of instruction, but prior to submitting 75% of the total number of lessons in the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $400 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after after submitting 75% of the total number of lessons in the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.11 Partial refund in combination courses of instruction. In combination courses of instruction, the school's refund policy shall be stated and applied separately to the correspondence and resident portions of the course of instruction and may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to submitting the first lesson of the correspondence portion of the course of instruction, the charge for that portion may not exceed 15% of the cost of the correspondence portion of the course of instruction if the cost of that portion is $500 or less, and may not exceed $75 if the cost of that portion is greater than $500.

(2) If for any reason a student withdraws or is dismissed by the school after submitting the first lesson of the correspondence portion of the course of instruction, but prior to completing 10% of the total number of lessons in the correspondence portion, the charge for that portion may not exceed the pro rata portion of the cost of the correspondence portion of the course of instruction, plus the lesser of $150 or 15% of the cost of the correspondence portion. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons submitted by the student;

(b) The number of lessons submitted by the student shall be divided by the number of lessons required to complete the correspondence portion of the course of instruction; and

(c) The resulting number shall be multiplied by the cost of the correspondence portion of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after submitting 10% of the total number of lessons in the correspondence portion of the course of instruction, but prior to submitting 75% of the total number of lessons in the correspondence portion, the charge for that portion may not exceed the pro rata portion of the cost of the correspondence portion of the course of instruction, plus the lesser of $400 or 15% of the cost of the correspondence portion. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the total number of lessons in the correspondence portion of the course of instruction, the charge for that portion may not exceed the cost of the correspondence portion of the course of instruction.

(5) If for any reason a student withdraws or is dismissed by the school prior to attending any resident classes, the charge for the resident portion of the course of instruction may not exceed 15% of the cost of the resident portion of the course of instruction if the cost of the resident portion is $1000 or less, and may not exceed $150 if the cost of the resident portion of the course of instruction is greater than $1000.

(6) If for any reason a student withdraws or is dismissed by the school after attending any classes, but prior to completing 10% of the resident portion of the course of instruction, the charge for that portion may not exceed the pro rata portion of the resident portion of the course of instruction, plus the lesser of $150 or 15% of the cost of the resident portion. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the resident portion of the course of instruction; and

(c) The resulting number shall be multiplied by the cost of the resident portion of the course of instruction.

(7) If for any reason a student withdraws or is dismissed by the school after completing 10% of the resident portion of the course of instruction, but prior to completing 75% of the resident portion, the charge for the resident portion may not exceed the pro rata portion of the cost of the resident portion of the course of instruction, plus the lesser of $400 or 15% of the cost of the resident portion. The pro rata portion shall be calculated as set forth in sub. (6).

(8) If for any reason a student withdraws or is dismissed by the school after completing 75% of the resident portion of the course of instruction,

the charge for that portion may not exceed the cost of the resident portion of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.12 Notice of withdrawal. (1) A school may not require that notice of withdrawal be in writing, on or in any particular form, or delivered in a specific manner.

(2) The school shall honor any valid notice of withdrawal given after the 3-business-day cancellation period and, within 30 calendar days after dismissal of the student or receipt of notice of withdrawal, shall refund to the student any amounts due and arrange for a termination of the student's obligation to pay any sum in excess of that permitted under the refund standards.

(3) A student shall be deemed to have provided constructive notice of an intention to withdraw:

(a) From a course of instruction with a fixed class schedule, or from the resident portion of a combination course of instruction, by failing to attend classes for a period of 10 consecutive class days without providing, prior to or during that period, an explanation to the school regarding the absences;

(b) From a course of instruction without a fixed class schedule, or from a course of instruction offered on a lesson-by-lesson basis, by failing to attend classes or utilize instructional facilities for a period of 60 consecutive days without providing, prior to or during that period, an explanation to the school regarding the absences; and

(c) From a correspondence course of instruction, or from the correspondence portion of a combination course of instruction, by failing to submit a lesson for a period of one year without providing, prior to or during that period, an explanation to the school regarding the inactivity.

(4) A student who has withdrawn from a course of instruction may be reinstated by making known to the school in writing that he or she wishes to continue in the course of instruction.

History: Cr. (1), (3) and (4) and renum. EAB 7.03 (7) to be (2) and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.13 Refund not conditional on compliance with school regulations. A school may not make its refund policy conditional upon compliance with the school's rules of conduct or other regulations.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 7.04 and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.14 Distribution of refunds to financial aid sponsors. All or a portion of any refunds due may be paid to sponsors furnishing grants, loans, scholarships or other financial aids to students, in conformity with federal and state laws, regulations and rules and requirements of financial aid sponsors. After any disbursements to financial aid sponsors have been made, the student shall receive the balance, if any, of the amount due under the school's refund policy.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

APPENDIX G

California Law Governing The Student Tuition Recovery Fund

any additional period reasonably requested by the student, the superintendent's decision shall be final. If a hearing is requested, the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code apply.

(g) It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the students have the option for a teach-out at another institution approved by the superintendent. The superintendent shall seek to promote teach-out opportunities whenever possible, with the student to be informed by the superintendent that he or she has the option of either payment from the fund or a teach-out.

SEC. 10. Section 94343 of the Education Code is amended to read:

94343. The superintendent shall assess each institution which collects any moneys in advance of rendering services an amount equal to one-tenth of 1 percent of the total course cost for each student newly enrolled. The assessment per student shall be not less than one dollar ($1), and not more than four dollars ($4). In addition, for each student who prepays an institution an amount in excess of four thousand dollars ($4,000), the superintendent shall assess the institution one-half of 1 percent of the prepaid amount which exceeds four thousand dollars ($4,000). The superintendent shall levy additional reasonable assessments only if required to assure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94342. The assessments shall be paid into the State Treasury and credited to the Student Tuition Recovery Fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments shall be levied during any fiscal year if, as of June 30 immediately preceding that fiscal year, the balance in the fund exceeds one million dollars ($1,000,000). However, regardless of the balance in the fund, assessments shall be paid by each newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the Student Tuition Recovery Fund are continuously appropriated to the State Department of Education for the purpose of paying claims to students pursuant to Section 94342. Not more than one hundred thousand dollars ($100,000) per fiscal year shall be used for the administration of the tuition recovery program authorized by Section 94342 and this section. The interest earned on money in the fund shall be credited to the fund. Except for institutions which offer vocational or job training programs, institutions which are accredited by a regional accrediting association recognized by the United States Department of Education, or which meet the student tuition indemnification requirements of a California state agency, or which demonstrate to the superintendent that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from the provisions of this section.

In the event of a closure by any institution approved under this chapter, any assessments which have been made against that institution, but have not been paid into the State Treasury, shall be recovered, and any payments from the Student Tuition Recovery Fund made to students on behalf of that institution may be recovered from that institution, by appropriate action taken by the Superintendent of Public Instruction. The moneys so deposited in the Student Tuition Recovery Fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of such institutions or students.

SEC. 11. Section 94350 of the Education Code is amended to read:

94350. Except for Article 2.5 (commencing with Section 94316) and Sections 94333, 94334, 94342, and 94343, this chapter shall become inoperative on June 30, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. (a) If this bill is enacted before January 1, 1990, and SB 190 is not enacted by that date, Sections 1.5 and 3.5 of this bill shall not become operative.

(b) If this bill and SB 190 are both enacted before January 1, 1990, then the following shall occur regardless of the order of enactment:

(1) Sections 1, 3.5, 5, 6, 7, 8, 9, and 10 of this bill shall become operative on January 1, 1990, shall remain in effect until January 1, 1991, and on that date shall be repealed. However, these sections shall continue to apply after January 1, 1991, to (1) any action commenced before January 1, 1991, pursuant to those sections and pending on or after that date and (2) any approval, conditional approval, or provisional approval granted before January 1, 1991, pursuant to Section 3.5 of this bill.

(2) Section 1.5 of this bill shall become operative on January 1, 1991.

(3) Section 3 of this bill shall not become operative.

(4) Section 4 of this bill shall become operative on January 1, 1990, and shall remain in effect notwithstanding Section 3 of SB 190.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

APPENDIX H

Alaska Regulations Governing Licensing Exemptions

(2) offer itself or through an agent enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution, whether the institution is in or outside the state, unless the agent is a natural person and has a currently valid agent's permit issued under this chapter or is exempt from the provisions of this chapter;

(3) accept contracts or enrollment applications of prospective students from an agent who does not have a current permit as required by this chapter; however, the commission may promulgate regulations to permit the rendering of legitimate public information services without the permit;

(4) instruct or educate, or offer to instruct or educate, enroll or offer to enroll, contract or offer to contract or award an educational credential, or contract with an institution or person to do so, in or outside the state, unless that person is in compliance with the minimum standards set out in section 60 of this chapter, the criteria established by the commission under section 50(1) of this chapter, and the regulations promulgated by the commission under section 50(7) of this chapter;

(5) use the term "university" or "college" without authorization to do so from the commission;

(6) grant, or offer to grant, educational credentials, without authorization to do so from the commission.

SEC. 14.48.030. EXEMPTIONS. The following educational programs or services and educational institutions are exempt from the provisions of this chapter:

(a) Institutions exclusively offering instruction at one, some or all levels of preschool through grade 12 are exempt from the provisions of this chapter.

(b) The following educational programs or services and educational institutions are exempt from the provisions of this chapter or portions of them, as determined by the commission:

(1) education sponsored by a bona fide trade, business, labor, professional, or fraternal association or organization, recognized by the commission and conducted solely for that association's or organization's membership, or offered on a no-fee basis;

(2) education solely avocational or recreational in nature and institutions offering avocational or recreational education exclusively;

(3) education offered by charitable organizations, recognized by the commission, if the education is not advertised or promoted as leading toward educational credentials;

(4) nonprofit postsecondary educational institutions offering undergraduate or graduate educational programs conducted in the state, but not by correspondence, which are acceptable for credit toward an associate, bachelor's or graduate degree;

(5) postsecondary educational institutions established, operated, and governed by the United States, a state or its political subdivision.

(am Sec. 1 ch 50 SLA 1977)

SEC. 14.48.040. COMMISSION TO ADMINISTER CHAPTER. The Alaska Commission on Postsecondary Education shall administer this chapter and may hire necessary personnel. The commission may obtain from departments, commissions and other state agencies information and assistance needed to carry out the provisions of this chapter.

SEC. 14.48.050. POWERS AND DUTIES OF COMMISSION. The commission shall

(1) establish minimum criteria consistent with section 60 of this chapter including quality of education, ethical and business practices, health and safety and fiscal responsibility which applicants for authorization to operate, or for an agent's permit, must meet before the authorization or permit is issued;

(2) receive, investigate and act upon applications for authorization to operate postsecondary educational institutions and applications for agent's permits;

(3) maintain a list of postsecondary educational institutions and agents authorized to operate in the state under this chapter;

(4) keep current and make available as public information the list of institutions and agents;

(5) enter into interstate reciprocity agreements with similar agencies in other states, if in the judgment of the commission the agreements will be helpful in carrying out the purposes of this chapter;

(6) receive and maintain as a permanent file, copies of academic records maintained in accordance with section 60(b) of this chapter;

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

APPENDIX I

New York Regulations Governing School Records

(4) section 126.4(a) relating to student-to-teacher ratio;

(5) section 126.4(e) relating to attendance requirements;

(6) section 126.5 relating to equipment and housing;

(7) section 126.7 relating to enrollment agreements with the exception of section 126.7(c) relating to refund policies for correspondence schools;

(8) section 126.9(a)(13) relating to financial information in a school's catalog;

(9) placement data as required in section 126.9(a)(14) for a school's catalog;

(10) section 126.9(a)(10) relating to facilities and equipment information in a school's catalog;

(11) section 5005(a)(7) of the Education Law relating to a description of facilities and equipment in the student disclosure material; and

(12) section 5005(c) of the Education law relating to a description of financial information in the student's disclosure material.

126.11 Records. (a) All records and files of a school shall be maintained for seven years, except for permanent student records as provided in subdivision (b) of this section, unless specific disposition is authorized by the commissioner, and shall include:

(1) all approved courses of study, accompanied by letters from the department granting such approval;

(2) all correspondence with the department and other supervisory agencies;

(3) copies of all advertising, bulletins and other promotional materials;

(4) [record of student] the attendance register, for each class, laboratory or session, progress in training and payments made to the school either by the student or on his behalf;

(5) records of administrative, supervisory and instructional staffs showing qualifications, approval by the department, teaching schedules and pupil load, attendance, contract salary and salary payments;

(6) inventories of equipment and consumable supplies;

(7) financial records in such form and kept in such manner as may be specified by the commissioner to facilitate the determination of the quality of instruction given and the ability of the school to discharge its obligations to its students;

(8) documentation that each student has met the entrance requirements for each course or curriculum for which the student has enrolled;

(9) a completed copy of the student enrollment agreement contract signed by both an authorized agent of the school and the student prior to the time instruction begins;

(10) records of all tuition and fees owed and paid by the student; all loans and grants from public sources received by the student or the school on behalf of the student; and the complete record of the disbursement of such public funds;

(11) documentation of the award of any advanced credits due to previous academic or practical experience, and a record of any substitutes to the course or curriculum approved by the department as a result thereof;

(12) records of employment or educational status of each student graduating during a reporting period established by the commissioner, which include the name, address and telephone number of hiring employer, the job title and the starting date of employment, or the name and address of the educational institution and the date when the student started instruction at that institution.

(b) Student permanent records, compiled at the time of course or curriculum completion, discontinuance or withdrawal, shall be maintained in a single file for each student, for a period of not less than 30 years after the student completes the program, and contain the following information:

(1) name, address, date of birth and gender;

(2) date of enrollment;

(3) name of curriculum, course or courses taken;

(4) record of all final tests and grades earned for each course or curriculum;

(5) date of completion or discontinuance;

(6) a notation whether a certificate or diploma was issued and the date issued.

(c) [In the event a school discontinues operation, the school owner or the licensed school director shall transfer all student records, including those permanent records as set forth in subdivision (b) of this section, to the department.] No licensed or registered school shall discontinue operation or surrender its license or registration unless written notice of its intention to do so and a plan for maintenance of safe keeping of the records of the school is provided to the commissioner at least 30 days prior to such discontinuance or surrender. Such plan shall provide for the transportation of all student records set forth in subdivision (b) of this section in a manner and to a location prescribed by the commissioner. The cost of such transfer of records shall be paid for by the school. Schools with common ownership may, at the discretion of the commissioner, store such records at another school with common ownership.

(d) Schools receiving Federal funds shall maintain records required by the applicable Federal statues and regulations.

126.12 Private school agent's certificate. (a) [Any] No person [who] shall [receives]receive any form of compensation or remuneration from any representative, agent, employee or officer of a licensed private school or registered [private] business school for the purpose of soliciting, procuring, or enrolling students [is required to], unless such person is a salaried employee of the school and [hold]holds a valid private school agent's certificate[,except that graduates or currently enrolled students of a school shall be exempt from the certification requirements of section 5004 of Education Law to the extent that they receive only gifts or other nonmonetary consideration with a retail value of not more than $25 from such school for each student referred for enrollment at the school]. Each agent shall produce his or her agent certificate upon the request of the commissioner, the commissioner's designee, or any prospective student. A school shall submit an application for licensure for an agent on or before the first day of employment of such individual. Upon submission of a complete initial application for licensure, the commissioner shall issue a temporary approval certificate within five days of receipt of the application by mail, or on the same day at offices and times designated by the commissioner. Upon receipt of a temporary approval certificate, an applicant may procure, solicit or enroll any student. A temporary approval certificate shall be effective for up to 60 days, as determined by the commissioner, and shall be destroyed by the school upon the issuance or denial of the applicant's two-year certificate.

(b) Application for a certificate shall be made on forms furnished by the commissioner. It may be made only by the school or schools which the agent is to represent. If an agent represents more than one school, each school [or a common ownership or more than one school] must apply for a certificate. If the school employs more than one agent, a separate application must be filed for each agent. The application shall request such information as the commissioner may require, including information about whether the applicant has ever been convicted of a crime or whether criminal charges are now pending. The application must be accompanied by: two full-face photographs which are a good likeness of the applicant and are one inch by one inch in dimension; certification by two persons other than employers or coworkers attesting to the good moral character of the applicant, and a nonrefundable $100 check or money order payable to the Education Department. [and a surety bond in the amount of at least $1,000 for each agent. A school may substitute a blanket bond for more than one agent at the rate of

APPENDIX J

Selected Testimony and Comments Regarding Study Review Draft

During the regional hearings and in response to our requests for comments, many individuals and organizations submitted written testimony. It is not possible to include all of these documents in our final report. The following, we believe, represent a range of views offered by proprietary institutions and state participants. Additional testimony is available from the SHEEO office upon request.

- William Carson, Member, Board of Directors, National Association of Trade and Technical Schools and President, American Technical Institutes, Chicago, Illinois
- Sharon Thomas Parrott, Vice President of Governmental Relations for DeVry Inc.
- Dave Krogseng, Executive Director, Minnesota Association of Private Postsecondary Schools
- Shaila R. Aery, Secretary of Higher Education, Maryland Higher Education Commission
- Kathleen F. Kelly, Associate Director, Illinois Board of Higher Education

STATEMENT BY

WILLIAM CARSON
Member, Board of Directors
National Association of Trade and Technical Schools

and

President
American Technical Institutes
Chicago, Illinois

Before the
Committee on Accreditation and Licensure
State Higher Education Executive Officers

March 19, 1991
Chicago, Illinois

I appreciate the opportunity to appear before you this morning and want to speak primarily in terms of goals which I believe in large part we all want to achieve.

First, however, I would like to outline briefly my experience over a period of 23 years in managing private career schools. Starting in 1968 I was with the Bell & Howell Schools Group and subsequently as Executive Vice President managed DeVry schools in eight states with approximately 15,000 students taking degree and non-degree programs in electronics. For the last 12 years I have been President of American Technical Institutes, which has operated much smaller schools in three states in a variety of non-degree programs.

I have been a member of the Board of the National Association of Trade and Technical Schools since 1983 and was Chairman from 1987 to 1989.

Having spent so many years in the field, I know that the great majority of private career schools well serve their students and prepare them effectively and efficiently for an enormous range of jobs.

I also know that there have been serious problems with some schools in recent years. While I don't agree with some recommendations in the report, I believe the report can help in our working to minimize future problems.

The goals are basically quite simple:

- Maintenance and expansion of a qualified and competent U.S. workforce.

- Opportunity for all individuals to obtain the post-secondary education they need to be part of that work force. This means the opportunity for the 25-year-old high school dropout to obtain needed skills in a short diploma program, as well as the super-achiever who wants to combine a medical education with the study of micro-biology over a period of many years.

- Minimizing the potential for students to be ill-served by any school. The proper definition of a "bad" school is one that does not serve its students - that does not place them first. It makes no difference if that school is a Chicago City College with a reported graduation rate of three per cent, universities that conduct classes with hundreds that overflow into several rooms, a chain of cosmetology schools whose owner is convicted of fraud, a Detroit air conditioning school that loses its accreditation, or a university that graduates a football player who can't read. And, of course, to the extent that any research funding, whether it be federal, state or private, is misused, it takes away from students.

It should be clear to all that the student comes first - that he or she is the customer.

The constant addition of legislation, regulation, and testing will not alone correct abuses. There should be incentives for success. For example, NATTS strongly supported the Student Right To Know Act. Information on completion rates, placement rates, passage of certification and bar exams should be readily available to prospective students. These statistics are harder to compile than might appear on the surface, but are essential to encourage the wide availability of effective education.

While cooperation between the states, federal government, and accrediting bodies and, thus, their combined effectiveness has left much to be desired, that combination should continue and be strengthened. Whether it has been the cut in Department of Education program reviews, inadequate staffing levels in some states, or slowness in adopting stronger accreditation standards by some commissions that has permitted problems to develop may not be all that important now. Certainly, increased attention by all parties has had an effect - hundreds of private career schools have closed in the last three years - many of these should never have opened, but many could still be serving students successfully if a combination of across-the-board actions had not overwhelmed them.

The roles of the three parties to the Triad must be defined more clearly so that each does what it is best equipped to do and that overlap of functions does not waste funds nor place undo burdens on schools. By working together we can build on the progress that has been made already and make the system more effective.

Looking at the study specifically, let me cite several points that are of particular concern:

- Ideally, nobody should enter any program they cannot benefit from. But that's not always easy to do and people do change. We don't want a system that categorizes individuals at an early age and discourages advancement. The proposed denial of admission to high school dropouts to private career schools is inappropriate for many reasons. A high school diploma is some measure of persistence, but often little more. Why it is believed that prospective students will find their own way at a community college, but be abused by a private career school is not clear.

- There is talk of "instant gratification" as being wrong. The report fails to recognize that there are tens of thousands of people in this country who have been denied a proper primary and secondary education for whatever reason. They need motivation, they need to learn skills to survive, not ponderous, delayed counseling.

- Similarly, remediation works best when combined with vocational training, not as a separate exercise. This was again verified by a recent Rockefeller Foundation study.

- Licensing of practically everybody employed by a school would be unwieldy at best. How a teacher is supposed to get a year's experience in teaching if he or she cannot get a license to teach without such experience is not clear.

- It is also not clear how each state can become expert in literally hundreds of curricula.

We support improvements in state licensing as well as in accreditation and the Department of Education procedures. The NATTS Accrediting Commission has adopted strong standards dealing with branching and commissioned salesmen, areas about which concern has frequently been expressed. Other procedures have been altered, including the addition of an investigative team.

We very much support working together to have the proper communication and defined roles in the Triad. Education should be available to all in a variety of ways. There should be choice. No single system can, in itself, train everybody. The Triad should foster that diversity and opportunity.

I would like to close with several other thoughts.

- There is a real danger that radically new legislation and/or regulation can lead to the control of educational content by federal and/or state governments. The long-term dangers of that are clear. Rather, further work through the Triad for modification can, with better administration of existing regulation, minimize abuses.

- The study states that "it does not delve into the more detailed issues regarding proprietary school effectiveness." The effectiveness of all education is the real test - the measurement of outcomes is essential. I hope we can work together to improve these measures as they apply to public, private, profit, and non-profit post-secondary institutions of all kinds. It will not be simple, but that is how education can be improved.

I certainly shall be pleased to answer any questions. Thank you.

Remarks in Response to a
"Study of the Methods and Effectiveness of
State Licensing of Proprietary Institutes"
Sponsored by SHEEO
State Higher Education Executive Officers

May 14, 1991
Washington, D.C.

Good morning, I am Sharon Thomas Parrott, Vice President of Governmental Relations for DeVry Inc. a nationwide system of institutions of higher education funded with private investment capital.

The nine U.S. DeVry Institutes and the eight campuses of Keller Graduate School of Management enroll more than 25,000 students in programs at the associate, bachelor's and master's degree level. All DeVry and Keller Institutions are accredited by the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools. Our institutions provide high quality, career oriented, higher education in business and technology to a diverse student population. The average family income of students attending DeVry is between $24,000 and $32,000. 41% of our undergraduate student population is minority.

We are committed to providing highly motivated and qualified graduates to meet the nation's workforce needs as evidenced by our undergraduate career development strategies and placement assistance efforts. In 1990, 93% of DeVry Institute graduates who actively pursued employment were placed in education related positions.

In my 20 years in higher education I have held faculty and administrative positions at public and private colleges and served the U.S. Department of Education in its student aid division in both the regional and Washington offices. For the past nine years at DeVry I have been responsible for our relationships with federal and state governmental entities as well as student aid policy and compliance. It is from my unique vantage point that I offer the following comments.

DeVry thanks SHEEO once again for this opportunity to provide testimony. As we have been present at all of the field hearings, we have witnessed the evolution of thought that has occurred during these hearings. Specifically, we are pleased with statements that explicitly recognize the importance of the contribution of proprietary institutions of higher education and the need for incorporation of proprietary schools into state educational planning.

Previous testimony presented by DeVry has focused on equal treatment of like type institutions and our experience with the different varieties of state licensing models. Today, we will focus on three areas:

1) Strengthening the state licensure role in the TRIAD.

2) The importance of including for-profit education in state higher education planning.

3) The need for negotiated rule-making.

Serving the needs of future students and future employers in the states of this union will require efficient and effective allocation of state higher education resources. Private for-profit institutions represent an additional source of private educational capital which together with public and eleemosynary sources are available to serve these future educational needs. Proprietary schools do not require state institutional funding and as taxpaying organizations, actually contribute to the financial resources available to the state.

Higher education faces an increasingly diverse student population that includes higher proportions of minorities, adults with family and work responsibilities, and students with inadequate levels of basic skills. The states need for a better educated workforce and the students growing interest in education for careers must be met with a more flexible and responsive higher education system. That system must support a varied mix of public and private institutions with varied institutional missions and allocate state financial and other resources to continue to increase diversity, choice, and productivity.

Our research shows that proprietary institutions contribute to maintaining diversity, access, and choice in American higher education. We believe that these institutions must be allowed to participate fully in the higher education system if we are to provide high quality educational opportunities to our citizens. We believe that quality educational outcomes should be a primary goal of all sectors of higher education. Assessing these outcomes should be an important element in state planning. We believe that the assessment of higher education institutions should focus on the institutional mission and output measures which reflect accomplishment of that mission.

Clearly, consumers deserve to have information regarding the institutions they choose to attend. We believe the requirements for clear and concise consumer information must be applicable to all institutions of higher education. Postsecondary education is a very competitive market-driven environment in which schools at all levels attempt to attract prospective students to their campus. Therefore, consumer protection concerns dictate that all information leading to proper consumer decisions should and must be made available.

In this regard, we would suggest that SHEEO review the recent recommendations of the Illinois Board of Higher Education's Committee on Scope, Structure, and Productivity which resulted in the IBHE requiring Illinois public, private and proprietary institutions, to disclose consumer and productivity information. The reports are based upon the premise that higher education must do a better job of informing the public about its goals, the quality and success of its programs, and its efforts to effectively use resources.

Private for-profit institutions play an important and perhaps critical role in educating citizens who might not otherwise have access to higher education in a state. We believe this role will expand in the future as the student constituency served by private for-profit institutions becomes a much larger proportion of the future student population in the United States. In order to assure the highest quality of programs, higher education state planning must incorporate the proprietary sector.

All institutions of higher education must meet the same standards to obtain degree granting authority and regional accreditation regardless of their governance. Therefore, these like institutions must be governed by the same rules.

We take issue with two points expressed in the report. First is the dual licensing model outlined on pages 25 and 26 of the report. State requirements for degree granting institutions must be the same regardless of tax structure to ensure consistency in degree designation. Overlapping and redundant requirements create unnecessary cost and effort for the state regulatory agencies as well as institutions. The "programmatic approval" process, which is the second step outlined in this model, is a function already being performed by the state licensing bodies as well as regional accrediting agencies. The regional accrediting agencies have the "considerable educational experience", and site visit teams are made up as outlined. To suggest the inception of yet another state oversight agency is duplicative; existing state higher education boards and the regional accrediting agencies must be relied upon to provide the experience needed for educational assessments. The weak link in the process is communication between the states and accrediting agencies. Strengthening the TRIAD alleviates this concern.

Secondly, we believe that there is an appropriate place for institutional participation in the direct oversight bodies of state authorizing or licensing agencies.

While the primary function of the state authorization or license may be to protect student consumers and to monitor business practices, under current procedures there is no assurance that this occurs in a consistent manner. The state authorization process varies substantially from state to state, frequently encroaches on areas more properly governed through the accreditation process, may be fragmented among several agencies within the individual state, and is not subject to any minimum federal standards or guidelines.

Although the state authorization is a prerequisite for schools' eligibility to participate in U.S. Department of Education programs, USED has little knowledge of or control over the standards and procedures utilized by the state agencies. Nor does it currently possess the explicit authority to determine what the state authorization should represent. Unlike accrediting agencies, which must meet the Department's regulatory standards in order to be recognized by the Secretary, the state agencies are subject to no minimum standards whatsoever. This lack of uniform standards limits the reliance which can be placed on state approval. If the state authorization is to represent a meaningful prerequisite for federal institutional eligibility, it should at very least be subject to some consistent standards of acceptability.

Several critical factors complicate the ability of state agencies to authorize, license and efficiently monitor the myriad postsecondary institutions from all sectors under their jurisdictions. We believe that coordination among the various agencies is critical to assuring proper exercise of the state's licensing functions and to permit the federal government and the accrediting bodies to reasonably rely on the states to carry out their responsibilities. It is our opinion that one person must be held responsible for implementing the state's role.

We believe the Congress should enact a procedure under the Higher Education Act, similar to the section 706 deferral process under Title VII of the Civil Rights Act of 1964. Under this process, federal funds would be allocated according to a formula, based on the number of eligible postsecondary institutions in the state, to a single state official, e.g. the State Higher Education Executives Officers (SHEEO). States would be eligible to receive this funding if they met established conditions.

Finally, we would like to focus on a series of recommendations DeVry has made to the U.S. Department of Education as part of our reauthorization legislative package. These recommendations are specifically designed to establish minimum acceptable standards for federal acceptance of the state authorization/license as a prerequisite for Title IV eligibility. Since part of the impetus for the SHEEO study relates to Title IV participation and the perceived intrusion by the federal government into state authorization and licensing activities, it seems to us that a review of what is known as the TRIAD (state licensing, accreditation, and eligibility and certification) is long overdue.

We propose the following in the area of state licensing:

1) Establishment of minimum acceptable standards for federal acceptance of the state authorization/license as a prerequisite for Title IV eligibility.

2) Authorize the Secretary of Education to make grants to eligible states to enable these states to:

   - Investigate consumer complaints and ensure enforcement of state laws applicable to institutions of higher education having students that receive financial assistance under Title IV.

   - Adopt and enforce consumer protection policies.

   - Establish and carryout a due process procedure relating to the withdrawal of or failure to renew the license of any institution.

- Establish and carry out a process for investigation and resolution of student complaints.

These state grants for enforcement of institutional integrity would be used for state investigative monitoring and enforcement activities designed to ensure the enforcement of institutional integrity.

In order for states to be eligible to receive these grants, which would help to support state licensing enforcement activities, the states would have to meet the following criteria:

- Enforce state laws and policies with respect to the authorization of institutions of education, which the Secretary determines meet federal standards for assuring compliance.

- Agree to assure that the state licensing and monitoring of institutions will be sufficient to determine compliance with federal and state laws.

- Agree to adopt and enforce procedures and requirements to protect students in the case of closure of any such institutions. This may include a teach-out provision, a record retention provision, and possibly a performance bond or state tuition refund program.

- Ensure that each institution of higher education in the state has a fair and equitable refund policy.

In closing, we thank you very much for this opportunity to testify.

mapps
Minnesota Association
of Private Postsecondary Schools

TESTIMONY OF

Dave Krogseng
Executive Director
Minnesota Association of Private Postsecondary Schools

STATE HIGHER EDUCATION EXECUTIVE OFFICERS

DENVER, COLORADO

April 9, 1991

Hearing on the Review Draft Paper:
"The Methods and Effectiveness of State Licensing
of Proprietary Institutions."

P.O. BOX 3909, MINNEAPOLIS, MN 55403 - (612) 374-2560 - (612) 374-2661 FAX

My name is Dave Krogseng, Minneapolis, Minnesota, and I'm the Executive Director of the Minnesota Association of Private Postsecondary Schools. I'm delighted to be here this morning to testify for MAPPS on the review draft of *The Methods and Effectiveness of State Licensing of Proprietary Institutions.*

I very much appreciate this opportunity to outline for you a state that works.

It's interesting to note that two of our chief state administrators and I came to the same basic conclusion about the primary thrust of my comments. In talking with both our Higher Education Coordinating administrator and the Department of Education administrator last week, we found that we had each determined independently the most significant reasons for our success. Private career education in Minnesota is successful because of the laws we have and the policy of inclusion of our sector in all matters involving higher education.

Let me give you some essential background. MAPPS is recognized in Minnesota law as the association representing private career education in the state. We have 30 members, containing over 70% of the students eligible for student financial assistance in private career education. All of our schools are accredited by one or more of the accrediting bodies recognized by the Secretary of Education.

Our schools date back to the 1870s, 70 years before the establishment of the first public vocational school in the state. Like career institutions nationally, most of our schools have narrow focus curricula: business, computer technology, drafting, electronics, cosmetology, medical technician, secretary, etc., designed to prepare the student for employment as quickly as possible.

I know that you, like we, have been disturbed by stories in the media about a number of private career schools that have been found to be abusing the system. Although the numbers of such schools have been relatively small, the situation has been magnified by our detractors. Minnesota has been free of such stories and I'm here this morning to tell you why.

Over the past several years we have concluded that the system in place in this state serves to keep out the "bad apples" and provide consumers with assurances of quality in the education they receive.

We know that our accrediting bodies have been working diligently to improve their processes and procedures to help overcome problems in our sector nationally. That accreditation process, plus the Minnesota regulatory system, plus the Minnesota inclusive system, and the dedication of our schools, points to quality education in our system.

Let me give you a few examples.

In 1989 the Higher education Coordinating Board issued a detailed study of private schools in the state where the students are eligible for student financial aid. In the conclusion to that report HECB said:

> *"Minnesota's private career institutions generally appear to provide responsive and responsible educational opportunities and a choice to Minnesotans. They complement the educational opportunities available through the technical institutes, community colleges, the University of Minnesota-Crookston and the University of*

> *Minnesota-Waseca. The state's provisions for oversight of private career institutions and their inclusion in planning and coordination efforts appear to have been effective in preventing the type of abuses by private career institutions that have been identified nationally. Student persistence, job placement, and starting salaries in related program areas appear to be comparable."*

In the spring of 1990 the U.S. Department of Education published default data for higher education institutions in the nation. Schools belonging to MAPPS have an enviable record. Not one school has a default rate of more than 20% and our overall rate is 13.2%, less than half the national average for our type of institution. We continue to be on par with our public counterparts in the state. The reasons for this can be found in the fact that MAPPS was the first system of higher education in the state to take the initiative in developing a default management program. For each of the past three years we have conducted a default management seminar to assist our schools in working their default rates down. We continue to put pressure on our schools to reduce the rates. Our initiative was commended by HECB and it was instrumental in having the public two-year institutions take the same approach.

Finally, I point to the 'Quality Assessment study completed last year, funded in part by HECB through a legislative grant. The second phase of this study, the follow-up of a sampling of the 1990 respondents, is underway now. I just want to highlight a few results. You have a summary in your packet.

- 89% of our students would recommend their school to a friend
- 87% were satisfied with the quality of teaching
- 83% satisfied with instructional materials
- 81% satisfied with schedule of classes
- 88% satisfied with relevance of courses

Minnesota's private career colleges and schools believe strongly in fair and tough regulatory practices. Minnesota law provides for that. With various amendments over the years, we have had such licensing laws in our state since 1968. There is not one school owner or director in the state today who would deny the overall value of our law. It very simply serves to keep out the "bad apples" and to assist us in providing the best possible quality education for the students we serve.

I think the first recommendation your final report should include is that higher education officials throughout the nation are committed to a strong and effective private career sector because it is a viable and necessary component of the overall higher education system.

The U.S. Department of Labor, in a recent study, said that the service sector will account for 16.7 million of the 18.1 million jobs created between now and the year 2000. Growth and demand will be particularly heavy for technical and related support occupations, and business and health services. While only 20 percent of these jobs will require a college degree, almost 70 percent will require education or technical training beyond high school. In other words, the kind of training offered by our schools. The public sector simply cannot do the job alone. Private career education is a necessary part of our efforts nationally to prepare people for jobs. I think SHEEO should make it very clear that private career education is essential.

DRAFT REPORT - SPECIFIC COMMENTS

Much of what is recommended in the draft report has been working in Minnesota for many years. I'd like to comment on some of the key elements of the report from our perspective.

First, in the area of consumer protection:

Advertising - Minnesota state law makes provision for all school advertising to be cleared with the Department of Education before being used. If outcome measurements are to be used, the same standards should then apply to advertising being done by public institutions. For instance, on placement data reporting, there must be a uniform system of reporting. The U.S. Department of Education tried to get that done, but pulled back, largely at the request of public institutions.

We object to the recommendation that the terms *college* or *university* be dropped from any proprietary institution. In Minnesota we meet the same standards that are required of all private colleges and universities. Further, the use of the terms can serve as an inducement for proprietary schools to enhance their overall programs.

School Catalogs and Enrollment Agreements - This is already a part of Minnesota state law.

Licensing of School Personnel - We already have a system in place for faculty and solicitors. We seriously question the value and benefit of a massive licensing system for other school personnel. This is an unwarranted recommendation, which would be very costly for everyone.

Institutional Finances - Our state law already provides for financial oversight by the Department of Education and the Higher Education Coordinating Board (including audits of student financial aid). We also have a pro-rata refund policy in place which we feel has been instrumental in our low default rate. Any recommendation on refunds should be uniform, at least for two-year institutions - public and private.

Teach Outs - We've had three teachout situations in the past ten years. In each case, the problems associated with the school closing have been resolved by our schools, the Department of Education, and, in some cases, by the state's Technical Colleges. A mandatory plan appears to us to be very cumbersome and unnecessary. We feel very strongly that our schools are perfectly able to handle teachout situations to protect the students and protect the reputation of our sector.

The NATTS/AICS Resource Center for State Affairs published a *School Closings/Teachouts Guide* last fall. This is a comprehensive document which state associations of private career colleges and schools can use to deal with these kinds of situations. It is not necessary to write this into state law.

Site Visits - Regular site visits are already a part of the Minnesota system.

Licensing Exemptions and Exceptions - This is no problem in Minnesota. However, SHEEO should review this situation considering various attempts to exempt schools with regional accreditation from licensing. The most recent example of this was in New Mexico. Minnesota passed legislation (1990) which exempts short term programs and various other categories to enable state regulators to devote more time to our type of schools. We supported that legislation.

Second, educational standards:

Pre-Enrollment Standards - We have very small numbers of ability to benefit students in Minnesota. Schools should be responsible for their own admissions practices. Nothing is going to guarantee success. Everyone should have the opportunity for an education. Minnesota law already provides that a prospective student must have a "reasonable chance of success." Imposing additional pre-enrollment standards is excessive.

Curriculum and Program Standards - Minnesota law and practice already provide for a course evaluation before being offered and then an ongoing evaluation. This is accomplished by retaining outside evaluators, not by creating a massive staff within the Department.

Outcomes - Through the placement reporting system of the Department of Education and various ongoing studies by the Higher Education Coordinating Board, Minnesota already has a system in place for judging outcomes. The U.S. Department of Education is attempting to do something similar. Our primary concern in this area is that all systems of higher education should abide by the same outcome measurements. In the interest of the consumer (student) there must be some way to compare the educational opportunities being offered. In addition, Minnesota has also initiated quality assessment measures through a series of pilot programs. A summary of our report is attached.

DRAFT REPORT - GENERAL COMMENTS

I think SHEEO must be very careful in defining the line between meaningful state regulation and punitive regulation, in response to a relatively few number of schools.

- Excessive fees will not get the job done and, in fact, will penalize many good, small schools.
- Private career education must be included as a part of the overall higher education system in each state and be enabled to be a partner in that system.
- Many of the standards imposed on the private sector are also legitimate standards for the public sector. There should not be separate sets of standards for institutions providing the same basic education.
- Licensing provisions should not be so detailed in scope that the basic concern for providing quality education is lost in the morass of regulation. The student should come first.

- If the states are to fulfill their legitimate roles in the regulation of our sector, there must be adequate staffing to get the job done.

- The Triad of the states, the federal government and the accrediting bodies must be renewed and strengthened.

INCLUSION

If I leave you with nothing else today, I hope I can convince you that an inclusionary policy, involving all sectors of higher education, is absolutely vital to this entire discussion.

In Minnesota we have six systems of higher education. The four public systems are the University of Minnesota, the State University System, the Community Colleges and the Technical Colleges. The two private systems are the Private College Council and the Minnesota Association of Private Postsecondary Schools. The latter two are voluntary organizations and include most, but not all, institutions eligible for membership.

The heads of the six systems, along with the Executive Director of the Higher Education Coordinating Board and the Commissioner of Education, make up the Higher Education Advisory Committee. We meet once a month and are usually joined by other staff from the Coordinating Board and the State Finance Department. It is with this group that the basic coordination and inclusion begins. The umbrella for all of this is the Higher Education Coordinating Board. Since the inclusion of our schools in the state scholarship and grant programs and the advent of the degree granting authority in the mid '70s, private career colleges and schools belonging to our association have been an increasingly important part of the overall higher education community. In 1980 that relationship was formalized when the State Legislature amended state law to include officially a member of MAPPS on the Higher Education Advisory Committee.

To give you a few examples of this inclusion, during the past year we have been represented, as equal partners with the other five systems, on the following HECB committees and task forces:

Inter-System Planning Group - the chief deputies of each system who serve as a study and planning group on a wide variety of higher education concerns.

Quality Assessment Task Force - coordinated the quality assessment pilot projects within each of the six systems, funded by the State Legislature.

Financial Aid Committee - an advisory committee to the Board made up of financial aid administrators from each system.

Transfer of Credit Committee - established to deal with specific problems of transfer of credit.

Post High School Planning Program Advisory Task Force - assists with programs designed to help high school students meet their post-secondary educational needs.

Student Advisory Council - designed to present student concerns to the higher education community.

Placement Tracking Systems Advisory Committee - to develop a six-system program for uniform placement tracking data.

Other committees have included financial aid review, postsecondary needs and access, off campus programs and parent information.

In addition, MAPPS has two members (as all systems do) on the HECB Program Advisory Council. This is the group which must approve major changes or additions to program offerings within higher education. It also is charged with the responsibility of reviewing associate degree programs.

The private career sector is involved with virtually every activity of higher education in Minnesota. The only exceptions are those subjects that deal exclusively with the public sector. And even then we are kept advised of what is being discussed and are invited to attend those meetings.

Perhaps of more importance are the intangibles, those special ways we are included outside of a more formal structure. This was never more apparent than in the past few months. Without going into all the details, the private career schools of Minnesota encountered a major problem with student loan access in early November, although MAPPS schools have a 13.2% default rate according to the U.S. Department of Education's published default rates last spring.

Our strongest allies in attempting to correct this situation have been the Higher Education Coordinating Board, the University of Minnesota, and the Private College Council. All three have made it clear to the largest lending institutions in the State that the student loan program is designed for students in all six systems of higher education and they will not tolerate or be a part of any effort to split off one system.

Which brings me to my main point: Our inclusion as an equal partner in the higher education community of Minnesota has brought strength and vitality to all of higher education. All six systems are stronger and more vital because they are an integral part of what is going on. We don't separate the University of Minnesota because it's so big any more than we separate the private career colleges and schools. We work together. We jointly seek to improve the level of quality of education.

Yes, we have disagreements. I would hope so. Anything less would mean we're not doing our jobs. Because of the system we have we are able to work out those differences among ourselves in a highly civilized and rational manner. It's not unlike our own Association. MAPPS consists of accredited colleges and schools in different program areas, as well as comparable program areas. In the twelve years I've been associated with the organization, not once has there been a problem because of the potential competitive factor. Our schools have learned to work together, just as all six systems of higher education have learned to work together. Our schools, as the systems, have recognized there's a higher cause out there to be met and it involves the quality of the education we offer our students.

If we were apart - if our schools weren't communicating - if the six systems weren't communicating - higher education in the private sector and all of post-secondary would be in a state of chaos.

We don't look on the Technical Colleges as our enemies. Sure, in a way we're competitors. That competition doesn't magnify itself into acrimony or constant positioning. We recognize our differences and the somewhat different student we each appeal to.

For MAPPS I must frankly admit that our Minnesota system leads to a certain sense of pride. We're proud to be a recognized member of higher education. We take a lot of satisfaction in being included in every major decision made in higher education in Minnesota.

Along with that pride goes a great deal of responsibility. Each of our member schools feels a responsibility to provide quality education for the student. We know we are a part of a nationally recognized system of higher education. We want to hold up our end of the bargain. We're "tuned in" to what is happening. We are a part of what's happening. Human nature alone dictates that we pay particular attention to the kind of education we offer and the job we do in our respective schools.

There was a time when we did not have that kind of relationship with our colleagues, either in the other systems or with our state regulators. Today that has changed. We recognize our role as a member of the community and the community recognizes us as an equal partner.

There is absolutely no question in my mind that many of the problems faced by career colleges and schools across the nation could be significantly alleviated by a state policy of inclusion.

As Dr. E. Ann Kelley of the Minnesota Higher Education Coordinating Board and a member of your Advisory Committee on the State Licensing Project has said:

> *"Many of the standards recommended in the draft are required in Minnesota. The proprietary sector is one of six systems of post-secondary education operating in Minnesota; the schools participate in most post-secondary education programs (including financial aid) and in post-secondary planning in the state. In our judgement, they are responsible providers of education."*

I think the State Higher Education Executive Officers should take the lead in recommending this inclusionary policy to the states. Three of your members have been a part of the growth of the Minnesota system. They have been instrumental in creating the kind of atmosphere in higher education that has led to all systems sitting at the same table and working together.

Dr. Clyde Ingle in Indiana, Dr. David Longanecker in Colorado, and Dr. Kathleen Kies in New Mexico all have intimate knowledge of the Minnesota system.

Thank you again for this opportunity. I would be more than happy to answer any questions you might have.

STATEMENT

TO THE

STATE HIGHER EDUCATION EXECUTIVE OFFICERS

ON

THE METHODS AND EFFECTIVENESS OF STATE LICENSING OF PROPRIETARY INSTITUTIONS

MAY 14, 1991

by

Shaila R. Aery
Secretary of Higher Education

Maryland Higher Education Commission

DR. MINGLE, ASSOCIATION MEMBERS AND DISTINGUISHED GUESTS:

I would like to begin my statement by complementing SHEEO and its consultant for producing a fine report. The study is very thorough and addresses in depth many critically important issues.

The report prompted the Commission to compare its recommendations to its current regulations and policies on proprietary institutions. I have attached a copy of this analysis.

I am pleased to report that by and large, Maryland's regulations compare quite favorably to the report's recommendations. In fact, in February of this year, Maryland adopted new regulations for private career schools which are very comprehensive, enhancing our consumer protection powers and safe guarding student tuition. These areas are consistent with many of the recommendations contained in the SHEEO report.

There are a few areas not currently in effect in Maryland. These areas, which are described on the attached staff analysis are being reviewed to determine whether their adoption would enhance the Commission's ability to effectively regulate the proprietary school industry in Maryland. It is premature to judge whether Maryland will adopt any or all of these recommendations, but they clearly merit serious consideration. They include the following:

1) Dedicating school fees to support the agency budget.
2) Running criminal background/and credit checks on new school applicants.
3) Requiring training for school directors and instructors.
4) Limiting the percentage of commissioned income for school employees.
5) Establishing minimum program completion and job placement standards.
6) Securing of an in-house legal advisor
7) Balancing agency funding/staffing levels with workload demands related to proprietary schools.

In examining the report and comparing it to our experience with the proprietary school industry, the Commission identified a few areas that may suggest further study and examination by SHEEO. These considerations include the following:

1) Identify troubled institutions before closure is inevitable. Require "identified" schools to develop contingency plans to assure that students are not adversely affected if the school must close.

   This is particularly important in view of the recent rash of proprietary school closings. In Maryland alone, 44 of 230 schools have closed in the past 12 months.

2) Define reasonable parameters for guarantee fund assessment and bonding requirements. Standardized formulas should be established to protect student tuition without forcing schools into financial failure.

3) Encourage the United States Department of Education and local guaranty agencies to establish more reasonable loan forgiveness policies for students displaced by school closings. Current guidelines are very restrictive and many innocent and deserving displaced students receive no loan forgiveness consideration. Of the 44 schools closing in Maryland in the past year, 14 were accredited and participated in Title IV funding. It currently appears that only a relatively few students will qualify for any type of loan forgiveness. Even under the best of circumstances the forgiveness for this very limited group of students will be only partial.

4) Explore ways to prohibit program length "padding" when programs are lengthened for the sole purpose of increasing tuition and qualifying students for additional financial aid.

5) Establish more effective ways of dealing with multilayered, multi-state school corporations. Call for more effective sharing of information among states and between states and United States Department of Education.

In summary, I would like to thank you for the opportunity to comment on this important report and to assure you of the Maryland Higher Education Commission's continued interest and support.

SHEEO REPORT
METHODS AND EFFECTIVENESS OF STATE LICENSING OF PROPRIETARY INSTITUTIONS

SUMMARY ANALYSIS
MARYLAND HIGHER EDUCATION COMMISSION

SHEEO Study Recommendations	Commission's Regulations/Policies
1. Institutional Approval based upon a reasonable expectation of business viability and success	1. Review and approval of business plan and financial structure as integral parts of institutional application
2. Financial protection of students	2. a) Regulatory requirement for 100% refund to students displaced by school closings b) Guaranty student tuition fund c) Additional requirement for bond/letter of credit for financially unstable schools
3. Limitation of enrollments strictly to students who demonstrate the ability to benefit from training	3. Review of proposed entrance requirements as integral part of both institutional and program application process
4. Fair and equal application of regulation of similar institutions	4. Commission regulates all of the State's private career schools; same standards are applied to all, although some are dually regulated (i.e. cosmetology and barbering)
5. Coordination and consolidation of state approval and regulation to the greatest possible extent	5. Commission closely coordinates with other agencies that regulate PCS schools, Cosmetology Board, Barber Board, Real Estate Commission, Department of Human Resources (day care training)
6. Emphasis on consumer protection in approval and regulation	6. Commission is heavily oriented in this direction with standards in all of the following consumer protection areas: a) advertising b) admissions c) curriculum d) refunds e) teach outs f) school personnel g) catalogs and enrollment agreements h) complaint processing/investigation i) comprehensive site visits j) procedures for rescinding approval

SHEEO recommendations not currently utilized by the Commission that may merit further examination:

1. Dedicate school fees to support agency budget.
2. Run criminal background and credit checks on new school applicants/licensing of owners.
3. Require training for school directors and instructors.
4. Limit the percentage of commissioned income for school employees.
5. Establish minimum program completion and job placement standards which must be achieved for approval renewal.
6. Secure in-house legal advisor.
7. Balance agency funding/staffing levels with workload demands. (Almost all states participating in SHEEO study were deemed to be significantly understaffed. Ratio of no more than 1 FTE/25 schools recommended.)

Areas SHEEO should further examine (not adequately addressed in report):

1. React to the trend toward numerous school closures in proprietary industry. Identify troubled institutions before closure is inevitable, establish contingency plans (proactive approach).
2. Define reasonable parameters for guarantee fund assessment and bonding requirements. Establish standardized formulas for adequately protecting students without forcing schools into financial failure.
3. Advocate more reasonable guaranteed student loan forgiveness policies for students displaced by school closings by USDE and guaranty agencies. Current guidelines are very restrictive and many deserving displaced students receive no consideration.
4. Explore ways to prohibit program length padding for sole purpose of increasing tuition and qualifying students for additional financial aid.
5. Establish more effective ways of dealing with multilayered, multi-state school corporations. Call for more effective sharing of information among states and between states and United States Department of Education.

5/13/91
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STATE OF ILLINOIS

April 10, 1991

Dr. James R. Mingle
Executive Director
State Higher Education Executive Officers
707 Seventeenth Street
Suite 2700
Denver, Colorado 80202-3427

Dear Jim:

Enclosed are our comments on *The Methods and Effectiveness of State Licensing of Proprietary Institutions* (Review Draft) prepared with the assistance of Bob Wallhaus and Marcia Langsjoen. We hope they will be helpful.

Sincerely,

Kathleen F. Kelly

Kathleen F. Kelly
Associate Director
Academic Affairs

cc: Jamie Merisotis

Comments on
The Methods and Effectiveness of State Licensing
of Proprietary Institutions (Review Draft)

Background. These comments are provided from the perspective of the staff of the Illinois Board of Higher Education. The statutes administered by the Board apply only to degree-granting institutions and make no distinction between for-profit and not-for-profit institutions. Currently, there are 81 institutions operating in Illinois with authorization under these statutes: 20 proprietary schools, 25 not-for-profit private institutions, 24 out-of-state institutions, and 12 "grandfathered" institutions authorized under the statutes to offer programs at off-campus locations. Potentially all Illinois institutions fall under the statutes in the off-campus context. Proprietary degree-granting participate in statewide planning and policy development through the Board's Proprietary Schools Advisory Committee. These institutions are also included in analyses of statewide educational resources and included in statewide data collection systems.

The staff of the Board have frequent informal communication with the Illinois Student Assistance Commission and the Nonpublic School Approval Section of the State Board of Education. The Illinois Student Assistance Commission is responsible for administration of Illinois student assistance programs and coordinating Illinois programs with those of the United States Department of Education. The Commission determines institutional eligibility for Illinois gift assistance and guaranteed loan programs. The Nonpublic School Approval Section of the State Board of Education is responsible for regulation of private business and vocational schools. Other agencies responsible for regulation of postsecondary institutions include the Illinois Department of Professional Regulation (cosmetology and other educational programs related to licensed occupations), the Illinois Department of Public Health, the Illinois Department of Veterans Affairs, and the Illinois Secretary of State (truck driving).

Principles. The principles suggested are compatible with the criteria for approval by the Board. Although the report rightly focuses on the regulation of institutions, students are ultimately responsible for the loans they receive. States can play a significant role in addressing default problems by promoting "informed choice" particularly among high school drop-outs, adults, and other nontraditional students. Examples include:

> The Missouri Coordinating Board for Higher Education publishes a *Directory and Statistical Summary* that provides comparative information on proprietary school programs. One can learn, for example, that executive secretary programs range in length from 33 to 72 weeks and cost from $3700 to $7800 and computer aided drafting programs range in length from 12 to 135 weeks and from $1000 to $10,000 in cost. Although we do not know how Missouri uses this information, it would extremely useful for students to have and, if combined with similar information about programs offered by public and nonprofit private institutions, could go a long way in helping students choose the right program at the best cost. This is particularly true in the Chicago where students have a broad choice among institutions and programs.
>
> Indiana's College Placement and Assessment Center (IMPACT) provides comprehensive college planning and preparedness test for students, research services to schools, and various information services including a computer network for schools, students & parents. A "hotline" provides nontraditional students with access to these services.
>
> Illinois' *Horizons* actually served as a model for Indiana's program and provides information on occupations, programs and schools and career testing. There are other sources of information, including most notably ISAC's information services on financial aid. This information is generally available to traditional students through the high schools and

> through job service offices. The challenge in Illinois may be to make this information more readily available to nontraditional students.

We suggest that a statement on states' role in promoting informed choice among students be included with the principles. For example,

> States should expand efforts to inform students, particularly nontraditional students, about career and educational opportunities, the choices among institutions and programs available, comparative costs, financial aid options, and students' academic and financial responsibilities.

In addressing concerns about the efficient and effective use of federal and state educational resources, academic quality may, in fact, be a more important issue than default rates. The approval and review processes of the Illinois Board of Higher Education focus on academic quality and fiscal viability of institutions. A comparison of the conclusions of our most recent review to subsequently available default rates shows a strong relationship between academic quality and default rates. Therefore, we suggest that a statement on academic quality be included with the principles of good practice. For example,

> States should conduct regular reviews of institutions and their programs to insure that academic quality and financial stability are being maintained and that students are achieving educational objectives.

Governance. The report raises two questions about the regulation of proprietary schools. First, should the regulation of proprietary schools differ in significant ways from the regulation of not-for-profit institutions? Second, should distinctions be made among different types of institutions?

In Illinois, we have found that the corporate structure of an institution is not the primary factor in predicting the quality of programs, financial stability, or the presence of fraud or financial aid abuse. For example, during the last four years, the Illinois Board of Higher Education has revoked the operating and degree granting authority of three institutions--two not-for-profit and one proprietary. All three of these institutions had similar basic problems including inadequate financing, poorly developed academic policies, inadequate management systems, and inadequate numbers or unqualified administrators and faculty. In addition, all three institutions had over-estimated the demand for their programs, attempted to serve underprepared students without appropriate academic support, experienced high turn-over among faculty and staff, and failed to establish relationships within the higher education community. In summary, our staff is seeking strategies for improved regulation that apply uniformly to all types of institutions.

Perhaps the most significant problem for separate regulation of proprietary schools is the development of academic standards that differ in important ways from those in place at other institutions. During the 1960's, separate standards were developed for degree-granting proprietary schools which called for unique degree designations (e.g., associate in technology and associate in business) and permitted what are now considered nonstandard or substandard curricula. We believe that, to the extent possible, all degree-granting institutions, including proprietary institutions, should be held to the same academic standards. In addition, students and employers have a right to expect that similar degree designations represent similar levels of learning and achievement.

Therefore, our staff suggests that if distinctions are to be made among institutions in the regulatory process, the corporate structure of institutions should not be the distinguishing factor. Institutions with similar missions should be regulated in similar ways. Further, the regulatory structure and process should promote common standards across institutions with similar missions.

The report appropriately suggests that there are a number of regulatory models that states may adopt. The regulatory structure of a state and individual agencies responsible for regulation of postsecondary schools may depend on the assumptions made about the institutions to be regulated which may vary from state to state. For example, if the assumption is made that the entities to be regulated are by their nature likely to engage in fraudulent behavior and abuse the financial aid system, then a rigorous regulatory process is required with frequent reporting requirements, checks and counter-checks on institutional activities, and staff with investigative and auditing skills. If, on the other hand, the assumption is made that institutions intend to function within commonly accepted business and academic principles, the regulatory process may be quite different. In this case, emphasis may be placed on the quality and consistency of academic programs and monitoring achievement of institutional and program objectives. The statutes and rules administered by the Illinois Board of Higher Education are based on the latter assumption and we continue to believe that this is appropriate. Our experience, which is limited to degree-granting institutions, has provided very few examples of intentional fraud and abuse of the financial aid system. Where abuses have been found, they were attributable to poor management and poor quality of academic programs. The report, however, appears to be based on the former assumption without establishing that this assumption is appropriate.